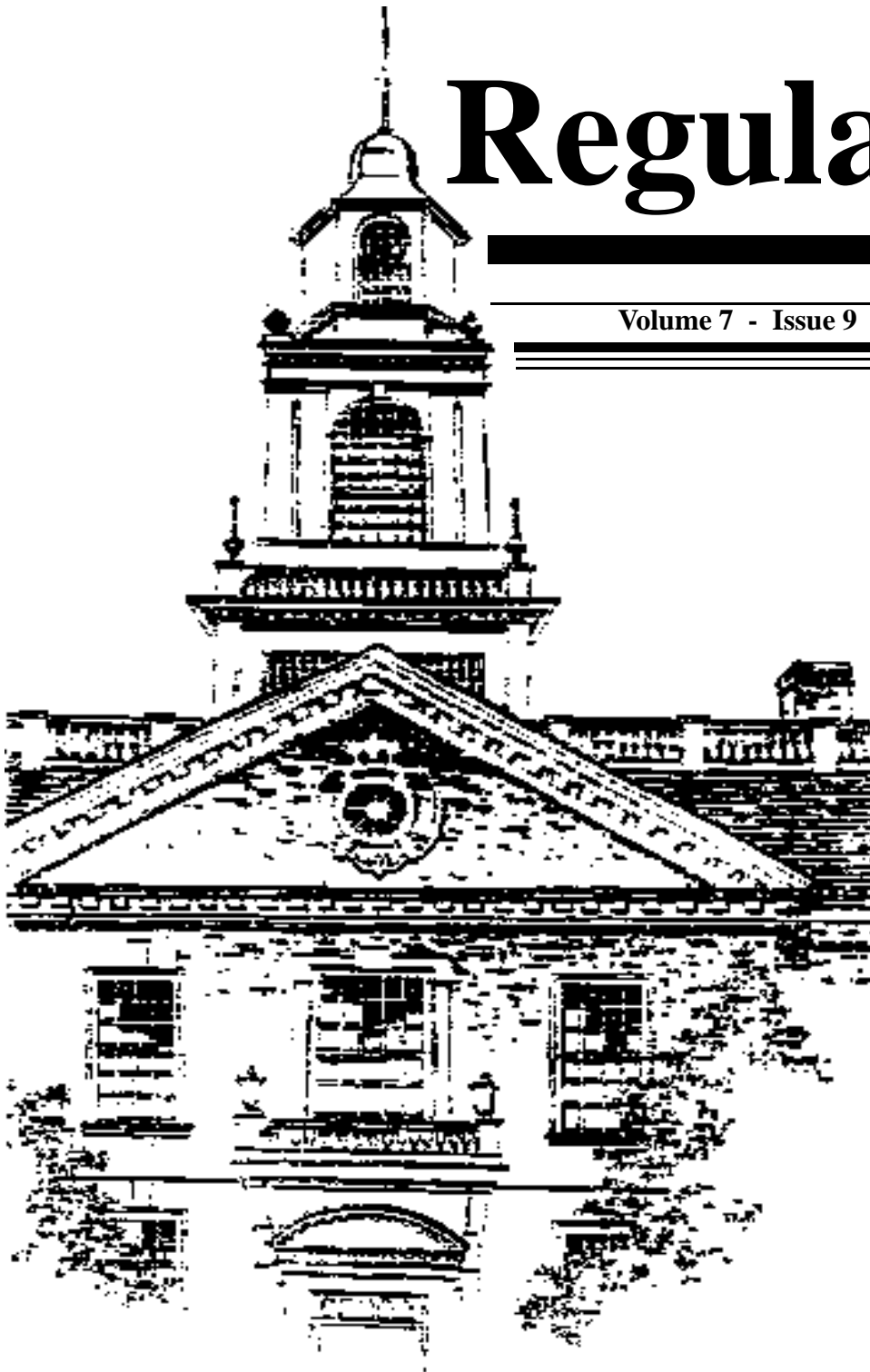

Delaware Register of Regulations

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

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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
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.
AUGUST 1	JULY 15	4:30 P.M.

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DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code,
Section 6301, 7101(a) (3 **Del.C.** §6301, 7101(a))

Michael T. Scuse, Secretary
Delaware Department of Agriculture

Dated: February _____, 2004

**EMERGENCY ORDER ADOPTING REGULATIONS
POULTRY**

AND NOW this 20th day of February, the Secretary of Delaware's Department of Agriculture, in discharging his duties and responsibilities under 3 **Del.C.** §§6301 and 7101(a) to protect, prevent, suppress, control or eradicate dangerous, contagious, or infectious diseases within the poultry population of the State of Delaware, deems it imperative that the following regulations be adopted on an emergency basis to combat the recent outbreak of avian influenza that has been detected on two (2) farms within the state. The Secretary proposes the immediate adoption of the following regulations, consistent with the requirements of Section 10119 of Delaware's Administrative Procedures Act (29 **Del.C.** §10119) so as to protect the health of the uninfected poultry within Delaware and to negate or minimize the potential adverse economic implications to Delaware's overall economy on failing to contain and eradicate the current avian influenza outbreak, as follows:

1.0 Any movement, transportation, or field application of poultry litter is forbidden on any Delaware farm until after March 10, 2004 or as modified by the Secretary.

2.0 All Delaware poultry house complete cleanouts are forbidden until after March 10, 2004 or as modified by the Secretary.

2.1 Partial cleanout will be permitted starting Friday, February 27, 2004 at 12:00 noon, for all growers outside the two mile quarantine zone who have received negative avian influenza test results from the testing of their last flocks.

2.2 Litter from the cleanout must be stored in a manure storage structure or stockpiled at the end of the poultry house and covered. Under no circumstances will the litter be permitted to be moved outside the general area of the poultry house nor spread.

3.0 With the exception of commercial integrators recognized as such by the Delaware Department of Agriculture, the transportation of live poultry intrastate or in or out of Delaware is forbidden.

4.0 Violation of the foregoing regulations will subject the violator to a fine of up to \$5,000.00.

5.0 The Delaware Department of Agriculture will receive, consider, and respond to petitions by any interested person for the reconsideration or revision of these emergency regulations.

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.

**DELAWARE STATE FIRE
PREVENTION COMMISSION**

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

Notice Of Public Hearing

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** 101 on Tuesday, April 20, 2004, at 1:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

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

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. The webpage address is www.delawarestatefiremarshal.com under the tabs

“Technical Services” and “Proposed Changes”.

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:a.m. on April 19, 2004, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

Part X, Ambulance Services Regulations**I. Purpose**

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

II. Application

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

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

~~b. a.~~ Privately owned vehicles not ordinarily used in the business of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless.

~~e. b.~~ A vehicle rendering service as an ambulance in

case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.

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

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

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

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

III. Definitions

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

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

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

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

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

Ambulance Service District - A geographical area with boundaries which are typically (but not always) aligned to fire service districts within the state as identified and certified by the Delaware State Fire Prevention Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Delaware Training Standard For Delaware Emt-b/ ambulance Attendants & First Responders - The current of United States Department of Transportation Curriculum.

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

~~**EMT-B** - Bridge Course - A state approved course of~~

~~instruction that upon successful completion entitles the provider to sit for the NREMT-B examination.~~

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

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

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

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

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

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

~~**Emergency Mission** - The BLS and ALS response to the needs of an individual for immediate medical care in order to prevent loss of life or aggravation or physiological or psychological illness or injury.~~

~~**First Responder** - An individual who has to take the First Responder Course as provided by the Delaware State Fire School that meets the DOT curriculum.~~

~~**First Responder Curriculum** - The United States Department of Transportation National Standard Curriculum for First Responders.~~

~~**Center For Medicare/Medicaid Services (CMS)** - The Federal Agency which oversee Medicare Billing and Ambulance Standard.~~

~~**HIPAA** - Health Insurance Probability and Accountability Act of 1996.~~

~~**Hospital** - An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services or rehabilitation services for the care or rehabilitation of injured, disabled, pregnant, diseased, sick or mentally ill persons. The term includes facilities for the diagnosis and treatment of disorders within the scope of~~

specific medical specialties, but not facilities caring exclusively for the mentally ill.

~~**Medical Command Facility** - The distinct unit within a hospital which meets the operational, staffing and equipment requirements established by the Secretary, Delaware Health and Social Services for providing medical control to the providers of advanced life support services. Any hospital that operates an emergency medical facility and desires to be designated as a medical command facility shall maintain and staff such facility on its premises and at its own expense with exception of base station communication devices which shall be an authorized shared expense pursuant to the provisions of Title 16, Chapter 98.~~

~~**Medical Control** - shall mean directions and advice normally provided from a centrally designated medical facility operating under medical supervision, supplying professional support through radio or telephonic communication for on-site and in-transit basic and advanced life support services given by field and satellite facility personnel.~~

~~**Medical Control Physician** - Any physician board-certified or board-prepared in emergency medicine, or a physician certified on advanced trauma life support (ATLS) and advanced cardiac life support (ACLS) who is credentialed by the hospital within which a medical command facility is located, and who is authorized by the medical command facility to give medical commands via radio or other telecommunication devices to a paramedic. When a medical control physician establishes contact with a paramedic, and provides medical control instructions that exceed or otherwise modify the standing orders of the statewide standard treatment protocol, the paramedic shall, solely for the purpose of compliance with the Medical Practices Act, be considered to be operating under the license of said medical control physician.~~

~~**Mobilization Time** - The total time from station alert to the time an ambulance "is in service".~~

~~**NREMT** - The National Registry of Emergency Medical Technicians.~~

~~**National Department Of Transportation (DOT) - Emergency Medical Technician Curriculum** - A curriculum developed and adopted by the Federal Government as a recommended guide for people providing emergency care in the field.~~

~~**National Registry Of Emergency Medical Technicians (NREMT)** - The nationally recognized organization for the testing and registering of persons who have completed a DOT, EMT-Basic course and First Responder Courses.~~

~~**National Registered Emergency Medical Technician - Basic (NREMT-B)** - a person who completed the DOT curriculum and passes passed the National Registry of Emergency Medical Technicians Examination.~~

~~**Non-emergency Ambulance Service** - Ambulance~~

service which provides routine transport of persons who are sick, convalescent, incapacitated and non-ambulatory but do not ordinarily require emergency medical treatment while in transit.

~~OEMS~~ — ~~Office of Emergency Medical Services, Division of Public Health.~~

Office Of Emergency Medical Services (OEMS) - The State Agency Mandated in Title 16 that serves as the designated representative of the NREMT; provides medical advise and direction; regulates the statewide automatic external defibrillator program; and coordinates data collection activities for the EMS system.

Patient - An individual who is sick, injured, wounded or otherwise incapacitated or helpless and/or seeks who needs immediate medical attention.

Pre-hospital Care - Any emergency medical service, including advanced life support, rendered by an emergency medical unit before and during transportation to a hospital or other facility.

Primary Ambulance Service - BLS Ambulance Service provided by the Primary Ambulance Service Provider certified by the Delaware State Fire Prevention Commission within a specific ambulance service district.

Primary Ambulance Service Provider - An organization or company which has been designated by the Delaware State Fire Prevention Commission as having primary responsibility for providing BLS ambulance service within a specific ambulance service district.

Protocols - shall mean written and uniform treatment and care plans for emergency and critical patient statewide that constitutes the standing order of basic life support provider. The treatment protocols shall be prepared by the Board of Medical Practice as defined by House Bill 332 of the 140th General Assembly.

~~Provider~~ — ~~A person who, as an individual or member of a corporation or organization, whether profit making or nonprofit, on a regular basis gives or offers for sale any supplies, equipment, professional or nonprofessional services, or is capable of giving or offering for sale supplies, equipment or services vital or incidental to the function of an emergency medical service system.~~

Recertification Training - A defined curriculum that once completed allows the individual to continue practicing as an EMT-B/Ambulance Attendant or First Responder for a specific period of time as determined by the Delaware State Fire Prevention Commission.

Response Time - The total time from "in-service" the ambulance is notified by dispatch until the ambulance arrives to arrival on the scene.

Responsible Charge - The individual who is identified as having both the responsibility and authority to ensure full and complete compliance with all requirements of this regulation.

Secondary Ambulance Service - Ambulance Service provided under contract to specific locations within a primary ambulance service district by a BLS Ambulance Service Provider other than the primary provider.

Secondary Ambulance Service Provider - An organization or company which provides supplemental BLS ambulance service anywhere in the state and always under specific contractual agreements.

Semi Automatic External Defibrillation (AED) Certification — An external computerized defibrillator designed for use in unresponsive victims with no breathing or signs of circulation (AHA Manual).

~~AED Certification~~ — ~~Semi-Automatic External Defibrillation Training and Certification as recognized by the Delaware Board of Medical Practice.~~

~~H. Training Standard~~ — ~~Effective June 16, 1998, the current of United States Department of Transportation Emergency Medical Technician Basic National Standard Curriculum shall be the curriculum adopted for the Ambulance Attendants in the State of Delaware.~~

Basic Life Service (BLS) Ambulance Service

IV. BLS Ambulance Service Permits

A. Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing BLS Ambulance Service upon the streets or highways of this state shall hold a valid permit as either a Primary or Secondary Ambulance Service Provider issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission (Appendix B).

B. The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

C. Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

D. Only companies holding a current, valid BLS Ambulance Service Provider Permit shall be authorized to respond and provide BLS Ambulance Service within the state.

E. A Primary or Secondary Ambulance Service Provider may not discontinue BLS ambulance service until a

replacement provider has been selected and can assume service with no reduction in service.

V. BLS Ambulance Service Districts

A. The Delaware State Fire Prevention Commission shall have the authority to establish Ambulance Service Districts as per Title 16 Delaware Code, Section 6717(a).

B. The role of Primary Ambulance Service Provider shall be assigned to those fire departments providing BLS Ambulance Service at the time this regulation ~~is officially adopted~~ was initially adopted in 1997. The ambulance service district for these providers shall correspond to their established fire districts as certified by the Delaware State Fire Prevention Commission.

C. In those areas in which fire departments ~~are~~ were not providing BLS Ambulance Service at the time this regulation was officially adopted in 1997, the organization who ~~is currently~~ was providing BLS Ambulance Service shall be designated as the Primary Ambulance Service Provider. The ambulance service district for these providers shall correspond to their current boundaries.

VI. Primary And Secondary BLS Ambulance Service Providers

A. BLS Ambulance Service may be provided by Primary Ambulance Service Providers within their ambulance service district or in the course of providing mutual aid within other ambulance service districts provided:

1. They have a current permit
2. They are assigned by the Delaware State Fire Prevention Commission as a Primary Ambulance Service Provider

B. The Delaware State Fire Prevention Commission shall be authorized to select a new Primary Ambulance Service Provider at such time that:

1. The current Primary Ambulance Service Provider chooses to discontinue service
2. Failure to meet one or more elements of these regulations creates a threat to public safety

C. Any organization desiring to assume the role of Primary Ambulance Service Provider will be required to apply to the Delaware State Fire Prevention Commission showing adequate cause in the interest of public safety to justify the change.

D. BLS Ambulance Service may be provided by Secondary Ambulance Service Providers only to those with whom they have a contract for such service provided they:

1. Have a current permit.
2. Have a written contract to provide BLS Ambulance Service to that specific location or site.
3. Provide the names, locations and conditions of all Secondary Ambulance Service contracts to the Delaware

State Fire Prevention Commission within 20 days of contract finalization.

VII. BLS Ambulance Service Provider Permit Requirements

BLS Administrative Requirements

A. Procedures for securing a BLS ambulance service primary or secondary ambulance service permit include:

1. The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

2. The Primary or Secondary Ambulance Service Provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

3. All requirements set forth in this regulation must be met before issuance of permit.

4. The Primary or Secondary Ambulance Provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence. The Primary or Secondary Ambulance Provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

B. Permits shall be valid for a period of one year from the permits effective date. Effective date runs for a calendar year.

C. The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

D. On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

E. No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

F. All individuals or ambulance service providers shall be required to participate in the Delaware State Fire Prevention Commission approved ambulance data collection system which includes:

1. A BLS run report will be completed on all dispatched responses.

~~2. A completed copy of the report will be left at the hospital receiving the patient, at the time of the call~~

~~3. A completed copy of the report will be forwarded to the state EMS office. EMT-B's must complete, without exception, a written/computer report on each patient contact. Reports must be completed in a timely fashion.~~

4. When available, the report will be entered

electronically and forwarded to the state EMS office.

5. Failure to comply with data submission will result in loss of ambulance provider license or EMT-B/Ambulance Attendant Certification.

6. Submit any other data to the designated agencies as required by the Delaware State Fire Prevention Commission.

G. The ambulance company shall provide on an annual basis a financial statement to the Delaware State Fire Prevention Commission. The Delaware State Fire Prevention Commission has the option to withhold funding as per HB 332 for failing to report the financial statement.

XIII. Reporting

A. ~~Every individual who operates as an ambulance attendant and provides patient care will:~~

1. ~~Ensure that the State mandated EMS Run paper on computer data report is submitted to ambulance agency for forwarding to the proper collection agency and the receiving health care facility. Failure to comply with data submission will result in loss of ambulance attendant certification.~~

2. ~~Submit any other data to the designated agencies as required by the State Fire Prevention Commission.~~

BLS Operational Requirements

A. Vehicle Standards

1. All ambulances shall be registered and licensed in the State of Delaware by the Delaware Motor Vehicle Department.

EXCEPTIONS:

- a. Those vehicles to which the international registration plan applies
- b. Those vehicles properly registered in some other state.

2. Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

3. Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-1822C).

B. Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission within Appendix "A" and updated annually following recommendations from the Delaware State Fire School Director with concurrence from the Delaware State Fire Prevention Commission's Medical Advisor Director.

C. Staffing Requirements

1. Minimum acceptable crew staffing when

transporting a patient shall consist of a driver and one EMT-B/Ambulance Attendant.

2. A minimum of one EMT-B/Ambulance Attendant shall always be in the patient compartment when a patient is present.

3. ~~Within 6 months following adoption of this regulation,~~ BLS ambulance drivers are required to have completed the "Emergency Vehicle Operators" course conducted by the Delaware State Fire School or an equivalent program approved by the Delaware State Fire Prevention Commission.

D. Quality Assurance

1. Each Primary and Secondary Ambulance Service Provider shall be responsible for monitoring quality assurance in the form of patient care and both mobilization and response times. The method in which this is accomplished is the authority and responsibility of the Primary or Secondary Ambulance Service Provider.

~~**NOTE:** For Primary Ambulance Service Providers this monitoring shall only apply to response within their Primary Ambulance Service District - NOT for mutual aid calls to other ambulance service districts.~~

2. ~~As identified above, included within the quality assurance program is the responsibility for assuring the public a consistently reasonable response to BLS ambulance calls. In the interest of public safety, primary and secondary ambulance service providers are responsible for meeting the following mobilization and response times:~~

Mobilization Times

~~80% of all emergency missions within 8 minutes -
1st Year regulation is in effect~~

~~85% of all emergency missions within 8 minutes -
2nd Year regulation is in effect~~

~~90% of all emergency missions within 8 minutes -
3rd Year regulation is in effect~~

~~Response Times - 90% of all BLS calls shall not exceed 18 minutes~~

3. ~~For the purposes of Monitoring quality control, bth mobilization and response times will be monitored based on ealendar year quarterly periods.~~

4. ~~Upon periodic review of both mobilization and response times, the Commission may consider extraordinary weather and traffic conditions as impacting these times.~~

~~**NOTE:** As stated above, this regulation is striving to ensure, within a high percentage of ambulance calls, that two goals are met:~~

~~1. That ambulances will be in service within 8 minutes from the time of station alert.~~

~~2. That, once an ambulance is in service, time to arrive on the scene is not more than 18 minutes.~~

~~**NOTE:** The intent of this criteria is to cause the review and monitoring of both mobilization and response time. By reviewing these times based on quarterly periods,~~

~~both mobilization and response times are being monitored relative to the above criteria in order to determine if a problem is developing. Mobilization or response time exceeding the above criteria for any quarter requires review. The same problem(s) occurring for a second period or within a total one year period of time require some form of correction action. The form of corrective action taken is the prerogative of the BLS Ambulance Service Provider and may include but not be limited to the following: Providing an incentive to personnel responding to ambulance calls during problem time periods, providing paid personnel during difficult time periods, contracting with secondary ambulance service providers on an individual or regional basis. Once determined to be necessary, corrective action is required to be implemented within 3 months. Additional corrective action shall be required if monitoring indicates a problem continues to exist.~~

E. Communications Requirements

1. Dispatch Centers

a. Dispatch centers for both Primary and Secondary Ambulance Service Providers shall meet the criteria established of NFPA 1221 as amended by the Delaware State Fire Prevention Commission.

b. Secondary ambulance service providers dispatch centers shall be responsible for following call taking protocols as established by the Delaware State Fire Prevention Commission. Calls determined to be ALS in nature shall be transferred to the appropriate public safety answering point (PSAP) within 30 seconds of taking the call utilizing a dedicated phone line to that PSAP.

c. Calls determined to be BLS in nature shall not be required to be forwarded to the PSAP.

d. Dispatch centers shall follow an Emergency Medical Dispatch System approved by the Delaware State Fire Prevention Commission.

2. Ambulances

a. All Ambulances shall be equipped with reliable communications systems which permit direct communications with their dispatch center and all medical command facilities with which the ambulance will or may operate.

F. SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the ~~Department of Health and Human Services,~~ Office of Emergency Medical Services.

G. Infection Control

All ambulance service providers will comply with the infection control requirements in chapter 12A, Title 16 of the Delaware code.

H. Medical Control

~~Once medical control is established,~~ Ambulance service providers shall be required to follow all orders

issued.

I. Center for Medicare Medicaid Services (CMS)

All ambulance services providers will comply with the Final Rule in the Federal Register (64F.R3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

J. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

All ambulance service providers will comply with the HIPAA of 1996.

VIII. Compliance

A. The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

B. Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire Service Standards" sections 1.1 through 6.1.

C. Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

D. Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

E. For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

F. The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

G. In addition to (F), it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

(a) Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

(b) Is guilty of gross negligence, incompetence or misconduct in providing services

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

(d) Has been found guilty of an unfair or deceptive trade practice

(e) Has violated any contractual agreement related to providing ambulance service

H. Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

I. Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to Delaware Code, Title 16, Chapter 66, Section 6608.

IX. Basic Life Support Data Assessment Committees

1. Members: The Delaware State Fire Prevention Commission, ~~hereinafter referred to as the Commission~~, hereby establishes Basic Life Support (BLS) Data Assessment Committees, hereinafter referred to as the Committees.

There shall be three committees, one in each county of the State of Delaware. Members shall consist of representatives from the County Volunteer Firemen's Association, the County Fire Chief's Association, the County Ambulance Association, and the County or local Fire and Emergency Medical (EMS) Dispatch Center dispatching the respective Company's EMS calls.

The President of his or her respective Association shall appoint each representative. The manager of the Fire and EMS Dispatch Center dispatching the Company's BLS incidents shall appoint the Dispatch Center representative.

The representative from each Association shall serve on their respective Committee until a letter of appointment is received from the respective Association or Dispatch Center indicating replacement of their current representative.

2. Goal Duties: Each Committee shall meet at least biannually, or as necessary, to review their respective County's Fire and EMS Dispatch Center's Basic Life Support (BLS) data. They shall review the monthly data for each Ambulance Provider, hereinafter referred to as Provider, in their County. Criteria for review shall include numbers of dispatched calls, scratches, and special circumstances. Each committee shall submit biannually a written report to the Delaware State Fire Prevention Commission, reporting on their reviews, and any suggestions

they might have to improve the BLS system or committee procedures.

If the Committee deems that a Provider needs improvement in an area, the Committee shall schedule a meeting with that Provider to determine if they can support the Provider in solving the identified problem(s). When meeting with the Provider, the Committee, by consensus, shall select a Chair to mediate discussions presented by the Committee to the Provider.

3. Grievance Procedure

In the event that the Committee has problems with the Provider, or the Provider has problems with the Committee, either may forward the problem to the Delaware State Fire Prevention Commission through the normal Grievance Procedures, previously adopted by the Delaware State Fire Prevention Commission. ~~Each Committee shall submit an annual written report to the Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or Committee procedures.~~

NON-EMERGENCY AMBULANCE SERVICE

X. Non-emergency Ambulance Service Permits

A. Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing non-emergency ambulance service upon the streets or highways of this state shall hold a valid permit issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission (~~Appendix B~~).

B. The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

C. Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

D. Only companies holding a current, valid non-emergency ambulance service provider permit shall be authorized to respond and provide non-emergency ambulance service within the state.

XI. Non-emergency Ambulance Service Provider Permit Requirements

Administrative Requirements

A. Procedures for securing a non-emergency ambulance service permit include:

1. The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

2. The non-emergency ambulance service provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

3. All requirements set forth in this regulation must be met before issuance of permit.

4. The non-emergency ambulance service provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

5. The non-emergency ambulance service provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

B. Permits shall be valid for a period of one year from the permits effective date.

C. The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

D. On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

E. No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

Operational Requirements**A. Vehicle Standards**

1. All ambulances shall be registered and licensed in the State of Delaware by the Delaware Division of Motor Vehicle Department.

EXCEPTIONS:

a. Those vehicles to which the international registration plan applies.

b. Those vehicles properly registered in some other state.

2. Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

3. Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-A-1822C).

B. Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission ~~within Appendix "A"~~ and updated annually considering recommendations from the Delaware State Fire School Director with concurrence from the Delaware State Fire Prevention Commission's ~~Medical Advisor~~ Director.

C. Staffing Requirements

1. Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one ambulance attendant.

2. A minimum of one ambulance attendant shall always be in the patient compartment when a patient is present.

D. Communications Requirements Ambulances

All Ambulances shall be equipped with a reliable communications systems which permit direct communications with all medical command facilities with which the ambulance will or may operate.

E. SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the ~~Department of Health and Human Services~~, Office of Emergency Medical Services

F. Infection Control

All ambulance service providers will comply with the infection control requirements in Chapter 12A, Title 16 of the Delaware code.

G. Center for Medicare Medicaid Services (CMS)

All ambulance services providers will comply with the Final Rule in the Federal Register (64FR3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

H. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

All ambulance service providers will comply with the HIPAA of 1996.

XII. Compliance

A. The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

B. Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire Service Standards" Sections 1.1 through 6.1.

C. Penalties - Following review of a valid complaint or

upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

D. Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

E. For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

F. The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

G. In addition to (F), it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

(a) Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

(b) Is guilty of gross negligence, incompetence or misconduct in providing services

(c) Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

(d) Has been found guilty of an unfair or deceptive trade practice

(e) Has violated any contractual agreement related to providing ambulance service

H. Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

I. Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to Delaware Code, Title 16, Chapter 66, Section 6608.

Appendix A

Required Ambulance Equipment & Supplies

- ~~1— set Battery Jumper Cables or Dual Battery System~~
- ~~1— Fire Extinguisher (minimum 5 pound dry chemical)~~
- ~~1— Portable Resuscitation, Oxygen Inhalation Apparatus~~
- ~~1— Fixed Oxygen Inhalation Apparatus~~
- ~~1— Portable Suction Apparatus~~
- ~~1— Permanently Mounted Suction Apparatus~~
- ~~1— Adult Bag Mask Ventilator~~
- ~~1— Child Bag Mask Ventilator~~
- ~~1— Infant Bag Mask Ventilator~~
- ~~2— Size "D" or "E" Bottles of Oxygen~~
- ~~Splints for two arms & two legs (May be inflatable splints, Timmons splints, or wooden padded boards)~~
- ~~1— Hare Traction Splint or Equivalent~~
- ~~1— KED (Or an equivalent Extrication Device)~~
- ~~1— Spine Board (Or Equivalent CPR Device~~
- ~~2— Backboards~~
- ~~1— Orthopedic Stretcher~~
- ~~8— Extrication Collars (2 large Adult, 2 Medium, 2 Small & 2 Child)~~
- ~~1— Bandage Shears~~
- ~~1— Hand Lantern~~
- ~~1— Set Oropharyngeal Airways (Seven Sizes)~~
- ~~1— Ambulance Cot~~
- ~~1— Folding Stretcher OR Square Bench~~
- ~~1— Stair Chair OR Combination Stretcher-Chair~~
- ~~1— Wrecking Bar— 24" Minimum~~
- ~~2— Sputum Pans OR Buckets~~
- ~~3— BP Cuffs (One Large Adult, One Adult & One Child)~~
- ~~1— Stethoscope~~
- ~~1— Head Immobilizer for each long backboard~~
- ~~1— AED (Effective one year from adoption of this regulation)~~

SUPPLIES

- ~~1— Set Dot Triangles~~
- ~~5— Adhesive Tape (various sizes)~~
- ~~2— Towels~~
- ~~2— Blankets~~
- ~~2— Pillows~~
- ~~24— Sterile Gauze Pads (4"X4")~~
- ~~6— Roller Bandage, Self-Adhering type (3" X 5 YD)~~
- ~~2— Roller Bandage, Self Adhering Type (6" X 5 YD)~~
- ~~1— Universal Dressing (10"X36")~~
- ~~3— Triangular Bandages~~
- ~~2— Sets of Cot Linens~~
- ~~1— OB. Kit (Sterile) Including:~~
 - ~~2— Drape Sheets~~
 - ~~2— Pair Rubber Gloves~~
 - ~~2— Receiving Blankets~~
 - ~~1— Bulb Aspirator~~
 - ~~2— Hand Tools~~
 - ~~2— Cord Clamps OR Umbilical Tape~~
- ~~1— Gallon of Water (Distilled)~~

Trauma Dressings

4- Ice Packs

12- Surgical Disposable Gloves

4- Hot Packs

1- Burn Kit

1- Sharps Container

6- Oxygen Masks— Non Rebreathers and 6 Nasal Canules

~~12- Eye/Mouth/Nose Protection (Disposable)~~

1- Child Car Seat

Eye Protection

Disposable Gowns

XIII. Discontinuation Of Service By Ambulance Providers**~~Ambulance Company's Intent to Discontinue Service~~****A. STEP 1**

Any fire department and/or ambulance company desiring to terminate ambulance service in the state of Delaware must notify the Delaware State Fire Prevention Commission in writing 120 days before terminating service.

B. STEP 2

Immediately upon notification of a fire department and/or ambulance company's desire to terminate service, the Chairman or the Vice Chairman of the Delaware State Fire Prevention Commission shall notify the president of the county firemen's association in which the fire department and/or ambulance company provides service to the residences and visitors of the state of Delaware for that district.

C. STEP 3

Immediately upon receiving notification of a fire department and or ambulance company's desire to terminate service the county firemen's association president shall appoint a committee. The committee shall include, but not be limited to: two members shall be the President's of the County Fire Chief's and County Ambulance Associations or their designees. The County President shall have the right to appoint other members to this committee, as he and/or she may deem necessary.

1. To communicate and offer assistance to the terminating company in an effort to help them continue service.

2. In the event that the county committee is unable to get the company to continue service, they shall then contact the surrounding departments and ascertain and/or develop a plan for those departments to divide the district and continue service.

3. In the event that steps one and two fail the county committee may put forth any and all suggestions they deem viable in order to provide ambulance service to the residences and visitors of the state of Delaware for that district.

4. The committee, through the County Firemen's Association President, shall report to the Delaware State Fire

Prevention Commission within 60 days with their recommendations and/or findings.

XIV. Training/Certification

All individuals who successfully complete initial EMT-B training ~~or a bridge course~~ shall be eligible for and must successfully pass the NREMT examination to receive Delaware EMT-B certification.

~~IV. Effective Date Of Implementation~~

~~January 1, 2002 all ambulance attendants who provide patient care and ride in the patient care compartment shall be Emergency Medical Technicians—Basic.~~

V. Eligibility For Certification/EMT-B/Ambulance Attendant

A. Apply to the Delaware State Fire Prevention Commission on the approved application form provided by the Delaware State Fire School.

B. An individual may apply for and receive certification as an EMT-B/Ambulance Attendant provided that.

1. They are a member in good standing of a Delaware Fire Department, an Ambulance Organization, a Private Ambulance Provider or any other group, business or industry certified by the Delaware State Fire Prevention Commission to provide ambulance service.

2. They have obtained EMT-B, EMT-I or EMT-P registration from the NREMT.

3. The Chief, CEO, or head of the respective organization signs the application.

4. They are compliant with criminal history background check legislation.

5. Must be 18 years of age.

6. Comply with the State of Delaware Immunization policy.

~~VI. Certification~~

~~A. After 2004~~ Certification will be obtained by completing a state approved EMT-B Course and passing the National Registry of Emergency Medical Technicians Exam. ~~Every individual who successfully completes the National Registry of Emergency Medical Technician Basic certification will receive~~ Registration & Certification will be issued for the time period to coincide with the NREMT registration cycle. This is typically a two-year period. Individuals will be issued a Delaware EMT-B certification upon successful completion of ~~initial or bridge course and~~ the NREMT registration process.

~~B. During the Implementation phase from January 1, 1998 to December 31, 2001 initial NREMT B certification may be obtained in one of two ways:~~

~~1. Complete a full Emergency Medical Technician Basic course as offered by a member of the~~

~~Prehospital Education Consortium of Delaware or other recognized training program and passes the National Registry of Emergency Medical Technicians examination.~~

~~Prerequisites~~

- ~~a Must be 18 years or older~~
- ~~b Healthcare Provider CPR~~
- ~~e AED Certification~~

~~2. Complete an Emergency Medical Technician Bridge course offered by a member of the Prehospital Education Consortium of Delaware or other recognized training program and passes the National Registry of Emergency Medical Technicians examination.~~

~~Prerequisites~~

~~a Must possess current ambulance attendant or~~

- ~~b Emergency Care Technician certification.~~

~~CPR/AED~~

- ~~e Must be 18 years old or older~~

~~C. After 2001 certification will be obtained by completing a state approved EMT-B Course and passing the National Registry of Emergency Medical Technicians Exam.~~

~~D. The Bridge Course will be offered only during implementation which ends December 31, 2001.~~

~~B. Individual who take EMT-B class from approved provider other than the Delaware State Fire School are required to meet all Delaware State Fire Prevention Commission requirements for certification.~~

~~1. It is the responsibility of the individual applying for certification to provide criminal history background check as specified by Delaware State Fire Prevention Commission.~~

~~2. It is the responsibility of the individual applying to provide all necessary documentation for certification to include AED/CPR, protocol training and NREMT-B card.~~

VH Recertification as DELAWARE EMT-B

~~A Individuals will be re-certified for a two-year period.~~

~~B All individuals initially receive both a State and NREMT-B Certification. After the first two years, the department or the individual may:~~

- ~~1. Reregister with the NREMT. The provider will be re-certified as both a Delaware EMT-B and NREMT-B.~~
- ~~2. Re-certify as a Delaware EMT-B.~~

~~C The registration requirements for a National Registry of Emergency Medical Technicians – Basic will be determined by the National Registry of Emergency Medical Technicians.~~

~~D The re-certification requirements for a Delaware EMT-B will be determined by the Delaware State Fire Prevention Commission, with recommendations of their medical advisor/director.~~

- ~~A. Individuals will be re-certified for a two-year~~

~~period.~~

~~B. The re-certification requirements for a Delaware EMT-B will be determined by the Delaware State Fire Prevention Commission, with recommendations of their medical advisor/director.~~

~~C. Requirements for re-certification are:~~

~~1. Individuals must submit a request for re-certification to the Delaware State Fire School documenting completion of requirements.~~

~~a. Requirements~~

~~• Attend a prescribed DOT/EMT-B refresher~~

- ~~• Current CPR/AED certificate~~

~~D. Re-registration as an NREMT-B: The registration requirements for a National Registry of Emergency Medical Technician – Basic will be determined by the National Registry of Emergency Medical Technicians.~~

~~1. Continuing education classes to achieve re-registration through the NREMT will be reviewed for approval by the Office of Emergency Medical Services in accordance with NREMT policy and procedures.~~

~~E. Active duty military personnel not able to re-certify due to deployment may request for an extension of certification until they are able to return and complete necessary requirements. Upon return the individual shall have 90 days to complete re-certification requirements.~~

VIII Continuing Education Requirements

~~A Requirements for continuing education will be determined by the authority having jurisdiction over type and quantity of Continuing Education required.~~

~~B Special Requirements:~~

~~1. Continuing education classes to achieve re-registration through the NREMT will be reviewed for approval by the OEMS in accordance with NREMT policy and procedure.~~

~~2. Delaware Continuing Education classes will be approved by the State Fire Prevention Commission with recommendation of their Medical Advisor/Director.~~

IX Decertification

~~A An EMT-B/Ambulance Attendant will lose their Delaware EMT-B Certification to provide patient care if:~~

~~1. They do not meet the required continuing education re-certification requirements as defined by the Delaware State Fire Prevention Commission.~~

~~2. Certification is revoked De-certification by the Delaware State Fire Prevention Commission following procedures and in compliance with Delaware State Fire Prevention Regulations, Part IX Fire Service Standards.~~

~~B. National Registry of Emergency Medical Technicians will revoke certification based upon their national policy. If an individual has their certification revoked by the National Registry of Emergency Medical~~

Technicians the Delaware State Fire Prevention Commission may also revoke decertify their Delaware EMT-B Certification.

C. The individual is convicted of an offense as specified in 16 Del C. §6712(b) while currently certified and the procedures in Part X, Section XV, Criminal History Background Check Section VII of this policy followed.

X Expired Certifications

A. Maintain state EMT-B certification, but NREMT-B lapsed and wish to regain NREMT-B-

1. Attends DOT EMT-B refresher as specified by National Registry of Emergency Medical Technicians
2. Pass DOT EMT-B Practical Exam
3. Pass National Registry of Emergency Medical Technicians Written Exam

B. Both state EMT-B certification and NREMT-B lapsed beyond two years

1. Attend EMT-B course and pass the National Registry of Emergency Medical Technicians exam
2. CPR/AED Current Certification.

C. Both state EMT-B certification and NREMT-B lapsed less than two years

1. DOT EMT-B Refresher
2. CPR/AED Current
3. National Registry of Emergency Medical Technicians/State Practical Exam
4. National Registry of Emergency Medical Technicians written exam.

Reinstatement For Delaware EMT-B Delaware EMT-B Reinstatement Policy

A. Individual desiring to regain certification as a Delaware EMT-B, after the expiration of their certification may do so provided the following conditions are met.

- Their card has been expired 18 months or less.
- They must attend an approved EMT-B refresher course.
- They must take and pass the Delaware Protocol examination.
- They must show proof of a current AED and CPR certification.
- They must take and pass the current protocol self study course available from the Delaware State Fire School.
- They must acquire a Delaware and Federal Background Check at their expense.
- They must submit all required paperwork and application for certification to the Delaware State Fire School.

B. Individuals whose card has expired 18 months or more must take the entire EMT-B course and National Registry Examination.

C. Individuals desiring to regain registration as an NREMT-B must follow the policies of the National Registry

Organization.

XI Testing Procedures For National Registry

Initial testing and re-testing for National Registered EMT-B and National Registered First Responders will follow the guidelines set forth by the National Registry of Emergency Medical Technicians.

XII Reciprocity

A EMT's Emergency Medical Technicians, paramedics, nurses, or physicians who enter Delaware with prior Emergency Medical Services Training a National Registry EMT-B, EMT-I or EMT-P certification will receive reciprocity as EMT-B in the Delaware System provided that.

1. They become a member of a certified ambulance service provider.

2. They have a current National Registry EMT-B certification.

A. Submit request for reciprocity

B. CPR and AED as approved in Delaware

C. Challenge four (4) practical exams

3. They have a current EMT-B certification from another state

A. Certification less than 2 years and practical less than 12 months—

1. State approved practical exam

2. National Registry written exam

B. Certification greater than two years and practical greater than 12 months

1. State Practical/National Registry

exam

2. Complete DOT EMT-B Refresher

3. National Registry written exam

4. State Approved AED & CPR

Certification

4. They submit the required application form to the State Fire Prevention Commission.

1. They become a member of a certified ambulance service provider in Delaware.

2. They submit the required application form to the Delaware State Fire School.

3. They have a current National Registry EMT-B, EMT-I or EMT-P certification.

4. CPR and AED as approved by the Delaware State Fire Prevention Commission.

5. Challenge four (4) practical exams as required.

6. Challenge Delaware Protocol Examination.

7. Provide mandated State & Federal background checks.

8. Applicants will be advised of the appeal process of Part X, Section XV, Criminal History Background Check if reciprocity is denied because of criminal history background check.

B. Applicant's certified from other states without at

least a Nationally Registered EMT-B certification must obtain National Registry prior to applying for Delaware Certification.

B. PARAMEDICS

~~They hold a current certification and/or license specified below~~

~~1. National Registered Emergency Medical Technician-Paramedic~~

- ~~A. Submit request for reciprocity~~
- ~~B. Must produce current cards AED/CPR~~
- ~~C. Letter from affiliate~~

~~2. Emergency Medical Technician-Paramedic from another state~~

~~A. Challenge National Registry exam at the basic or Paramedic level~~

~~B. Must take DOT refresher at the level they are challenging written exam~~

C. REGISTERED NURSE

~~1. Registered Nurse or higher with current Ambulance Attendant Certification~~

- ~~A. DOT EMT-B Refresher~~
- ~~B. National Registry/State approved practical exam~~

- ~~C. CPR/AED~~
- ~~D. NREMT-B exam~~
- ~~E. Letter from affiliate~~

~~2. Registered Nurse or higher with no prior EMS training.~~

- ~~A. CPR/AED~~
- ~~B. EMT-B course~~
- ~~C. State approved practical~~
- ~~D. National Registry written exam~~

D. PHYSICIANS WITH DELAWARE LICENSE

- ~~A. CPR/AED~~
- ~~B. State approved practical exam~~
- ~~C. National Registry Written exam~~
- ~~D. Letter from affiliate~~

E. PHYSICIANS WITHOUT DELAWARE LICENSE

~~A. CPR/AED~~

~~B. EMT-B course National Registry State approved practical~~

- ~~C. National Registry Written exam~~
- ~~D. Letter from affiliate~~

~~F.C. The Delaware State Fire Prevention Commission reserves the right to administer a written examination if deemed necessary.~~

~~G. The State Fire Prevention Commission will grant reciprocity with recommendations from their Medical Advisor/Director.~~

XV. Criminal History Background Records Check Policy

I. Authorized Governmental Designee for the Delaware State Fire Prevention Commission

A. The Delaware State Fire Prevention Commission authorizes the Director of the Delaware State Fire School to be its governmental designee to acquire and review State and Federal criminal history ~~records~~ background checks submitted by the State Bureau of Identification for an applicant applying to become an Ambulance Attendant/ ~~or a~~ Delaware Emergency Medical Technician and to interview the applicant, if necessary.

II. Evaluation Procedure for Criminal History Background Checks

A. The Director of the Delaware State Fire School shall evaluate the criminal history ~~records~~ background checks using the criteria established in 16 Del. C. § 6712(b). All criminal history ~~records~~ background checks will be forwarded by the State Bureau of Identification to the Director of the Delaware State Fire School.

B. Should the Director of the Delaware State Fire School as a result of the criminal history records check find cause to recommend to the Delaware State Fire Prevention Commission that it deny the application of the person seeking certification as an Ambulance Attendant/ ~~or as an~~ Delaware Emergency Medical Technician-~~B~~, the Director shall notify the Delaware State Fire Prevention Commission of this decision.

C. The Delaware State Fire Prevention Commission shall advise the applicant that it intends to deny the application and state the reason therefor. The Delaware State Fire Prevention Commission will also advise the applicant of the right to review all information reviewed by the Director of the Delaware State Fire School and the right to appeal the Delaware State Fire Prevention Commission's decision by requesting a hearing before the Delaware State Fire Prevention Commission.

III. Appeal Process for Denial of Certification or Decertification because of Criminal Conviction

A. Any Delaware EMT-B/Ambulance Attendant applicant or certificate holder notified by the Delaware State Fire Prevention Commission that the Delaware State Fire Prevention Commission intends to deny the application or decertify the certificate holder because of criminal history records check information may appeal the denial to the Delaware State Fire Prevention Commission. The process is:

1. Within 10 days after the postmark on the notification of the intent to deny certification or decertify a certificate holder, the applicant shall submit a written request for a hearing to the Delaware State Fire Prevention Commission stating the reason(s) supporting the appeal.

2. Notice of the hearing shall be given at least 20 days before the day of the hearing and comply with the

provisions of 29 Del.C. §10122.

3. The grievance hearing before the Delaware State Fire Prevention Commission will be conducted in accordance with the Delaware Administrative Procedures Act 29 Del.C. Ch 101.

4. The hearing will be closed to the public unless the applicant requests an open hearing. After the hearing, the Delaware State Fire Prevention Commission will inform the applicant of its decision.

IV. Requirements for Certification

A. Persons seeking certification as an Ambulance Attendant/Delaware Emergency Medical Technician ~~Ambulance Attendant or as an Emergency Medical Technician~~ must be eighteen (18) years of age at the time of application.

1. Individuals entering an EMT-B course must be eighteen (18) years of age at the start of the course.

B. An individual applying for certification must meet the requirement of Part X, of the Delaware State Fire Prevention Regulations "Ambulance Service Regulations". ~~Section V, Eligibility of Certification of the State Fire Prevention Commission Addendum to the Ambulance Service Regulations, BLS Ambulance Provider/First Responder.~~

C. Persons seeking certification must meet the criminal history record check as mandated in 16 Del C. § 6712(b), effective July 12, 2001 and follow the procedures outlined in this policy.

V. Administrative Policy Pertaining to Criminal History Background Checks

A. Delaware State Fire School All training announcements for EMT-B courses will include the statement "Criminal History Background Records checks will be required on or before the first night of class".

B. All Chiefs of Departments, Presidents or Ambulance Captains of volunteer rescue or ambulance squads or Operating Officers of private corporations which have students pre-registered for the class will be sent a notice to inform the student that a criminal history background records checks will be done on the first night of class and fingerprinting will be required. It will be the responsibility of private EMT-B training institution to make their students aware that a Criminal History Background Check is required to become a State of Delaware EMT-B and the Criminal History Background Check be available in order to receive certification.

C. Any student not pre-registered for the class will not be accepted as a walk-in.

D. All EMT-B students will sign a release provided by the State Bureau of Identification authorizing the criminal history records check. Any student failing to sign the designated form will not be allowed to participate in the

course.

~~E. All students of new courses who are members of a volunteer fire, rescue or ambulance organization will sign the authorization of payment allowing the State Fire Prevention Commission to reimburse the State Bureau of Identification on their behalf for the cost of the criminal history records check.~~

F. E. Students who are members of a private ambulance service are required to pay the course tuition prior to the first night of class. The tuition is non-refundable unless the student drops out prior to the first night of class. The tuition includes the cost of the criminal history records check which will be paid to the State Bureau of Identification on the student's behalf by the Delaware State Fire School.

G. F. Any volunteer fire, rescue or ambulance company ~~which~~ registering a student who is denied certification pursuant to the provision of 16 Del. C. § 6712(b), shall be responsible to reimburse the Delaware State Fire Prevention Commission for the cost of the criminal history records check.

H. G. Any student accepted into the course who does not complete same the course will be required to reimburse the Delaware State Fire Prevention Commission the cost of the criminal history records check and course textbook.

VI. Condition and Duration of Certification/De-certification

A. The Delaware State Fire Prevention Commission shall issue initial certification as an Ambulance Attendant/~~and~~ Delaware Emergency Medical Technician – Basic as prescribed in Part X, ~~Section VI, Certification,~~ of the Delaware State Fire Prevention Commission Regulations provided that:

~~1. The applicant passes the mandated criminal history record check.~~

~~2. Obtain all necessary immunizations.~~

~~3. Meet the course attendance requirement policy as prescribed by the Delaware State Fire School, if applicable.~~

~~4. Pass the National Registry of Emergency Medical Technician's Examination.~~

~~B. De-certification~~

~~1. The State Fire Prevention Commission shall decertify an Ambulance Attendant or Delaware EMT-B if:~~

~~a. The individual does not meet the re-certification requirements established in the State Fire Prevention Commission Regulation, Part X, section IX. Or~~

~~b. The individual is convicted of an offense as specified in 16 Del. C. § 6712(b) while currently certified and the procedures in section VII of this policy are followed.~~

~~VII B. Procedure for De-certification for Criminal Offense~~

~~A 1. The Delaware State Fire Prevention~~

Commission may decertify any currently certified Ambulance Attendant/ ~~or~~ Delaware Emergency Medical Technician-Basic ~~EMT~~ when it has reason to believe that the person has been convicted of a crime within the scope of §6712 of Title 16.

B. 2. Upon receiving a written notice that an Ambulance Attendant/ ~~or~~ EMT Delaware Emergency Medical Technician-Basic was convicted of a crime within the provisions of §6712, Title 16 the Delaware State Fire Prevention Commission shall:

1 a. Immediately suspend the individual's certification pending an investigation into the allegations.

2 b. Notify the individual in writing of the allegations and suspensions and allow the certificate holder an informal opportunity to contest the allegations of a conviction.

3 c. Require the individual to obtain a current Criminal History background check at their expense.

a 1. Criminal History Background check information will be sent to and reviewed by the Director of the Delaware State Fire School, who will make determination if cause for de-certification exists. The Director of the Delaware State Fire School will notify the Delaware State Fire Prevention Commission of the findings.

4 d. Based on the information provided by the Director of the Delaware State Fire School, the Delaware State Fire Prevention Commission will either inform the certificate holder of the intent to de-certify the individual or lift the individual's suspension.

€ 3. The individuals may appeal the de-certification using the procedure under Part X, Section XV, Criminal History Background Check, Appeal Process ~~section III, Appeal Process specified in this Policy.~~

~~VIII. Reciprocity Applicants for Certification as Ambulance Attendant or EMT~~

A. Applicants applying for reciprocity for Ambulance Attendant and Delaware EMT-B from another state shall meet the requirements of Part X, Section XII of the Delaware State Fire Prevention Commission Regulations

B. Applicants applying for reciprocity from another state must comply with the background check requirements as specified in 16 Del. C. § 6712.

~~IX. Reciprocity Applicants - Criminal History Records Check Procedures~~

A. Applicants seeking reciprocity to become Delaware Ambulance Attendant or EMT's must submit to a criminal history records check prior to applying for reciprocity certification.

1. Applicants will go to a Delaware State Police Troop and apply for a State and Federal criminal history records check. All reciprocity applicants will pay at the time of request. The criminal history records check must be done

within 30 days of the reciprocity request.

2. Applicant will authorize the release of the criminal history records check information directly to the Director of the Delaware State Fire School.

3. Applicant will notify the Delaware State Fire School on the prescribed form they are seeking reciprocity and have applied for a criminal history records check.

4. Upon receipt by the Delaware State Fire School and evaluation of the criminal history records check the individual will be notified by the Fire School as to how to proceed with required testing and certification procedures.

5. Should the applicant be denied reciprocity because of criminal history records check information they will be advised of the appeal process in section III of this policy.

~~X. C. Funding of Reciprocity Criminal History Background Checks~~

A 1. All applicants will pay for the criminal history background records check at the time of their request.

1 a. It is the responsibility of the private providers, private individuals or City of Wilmington to pay all costs – they are not eligible for reimbursement.

2 b. Upon successful completion of the reciprocity process the Delaware State Fire Prevention Commission will reimburse the individual or the individual's volunteer fire, rescue or ambulance organization for the cost of the criminal history background records check.

~~XI. D. Reciprocity for University of Delaware Students~~

A 1. The Delaware State Fire Prevention Commission will waive the criminal history background records check requirements for all University of Delaware Students applying for certification as an Ambulance Attendant ~~or as an~~ Delaware Emergency Medical Technician.

1 a. The University Police Department will provide the Director of the Delaware State Fire School with a written document listing all eligible students and a statement that they have passed an internal background check at least equal to the requirement of 16 Del. C. § 6712.

~~XII. E. Confidentiality Of Criminal History Background Check Information~~

A 1. Information obtained pursuant to the criminal history background check is confidential and except as provided in Section C below, shall not be released from the Delaware State Fire School under any circumstances to anyone.

B 2. All criminal history background check information that is reviewed by the Director of the Delaware State Fire School shall be retained in a locked file cabinet in the custody of the Director for a two (2) year period.

€ 3. When a denial for certification is made, the

information will be turned over to the Delaware State Fire Prevention Commission where it will be secured for at least 60 days or until the appeal process is completed.

1. If an appeal is not filed at the end of 60 days, the information is to be returned to the Director of the Delaware State Fire School.

~~4.~~ Per 16 **Del.C.** §6712 the individual may meet with the Director of the Delaware State Fire School and after providing proof of identification including a photo identification, review their information. Copies will not be provided to anyone.

XIV XVI First Responder

First Responders do not meet the requirements of EMT-B and cannot transport a patient without a Delaware EMT-B present and in the patient care compartment.

~~A Individuals who successfully complete the Delaware State Fire School First Responder Course will be certified as same by the Delaware State Fire Prevention Commission for a period of two years.~~

A. First Responder Criteria Eligibility for Delaware First Responder Certification

1. CPR/AED Prerequisites 16 years of age

2. Must be 16 years old or older Complete Approved DOT First Responder Curriculum

~~3. National Registry First Responder Certification is optional~~

~~C Individuals who have maintained their Ambulance Attendant Certification until December 31, 2001 but do not become an Emergency Medical Technician Basic will be certified as a First Responder.~~

B. Certification is valid for 2 years with a re-certification date of September.

C. Re-certification

1. Must re-certify as mandated by the Delaware State Fire Prevention Commission.

a. DOT First Responder Refresher, AED and CPR.

b. National Registry – As determined by National Registry.

D. De-certification

1. May have their certification revoked by the Delaware State Fire Prevention Commission in compliance with the Delaware State Fire Prevention Regulations Part IX “Fire Service Standards”.

~~D A First Responder may provide initial on scene care in the following situations:~~

~~Initial on scene care as contained in the First Responder curriculum:~~

~~Semi Automatic External Defibrillation if holding an AED card.~~

~~Cardiopulmonary Resuscitation (CPR)~~

E The First Responder may not provide transport of a patient without an EMT-B or higher present.

~~F First Responders can participate as a member of an ambulance crew with an EMT-B providing Patient Care.~~

~~G Must re-certify as mandated by the State Fire Prevention Commission to maintain First Responder Status.~~

~~• DOT First Responder Refresher, AED & CPR~~

~~• National Registry – As determined by National Registry~~

~~H May have their certification revoked by the State Fire Prevention Commission in compliance with Delaware Fire Service Standards.~~

~~I Reciprocity for First Responders from other states must submit request for reciprocity, obtain CPR/AED as approved in Delaware, and challenge two practicals.~~

XV E Expired First Responder Cards Certifications

~~A. State First Responder card lapsed less than two (2) years~~

~~1. Refresher as specified by State Fire Prevention Commission~~

~~2. DOT First Responder Refresher~~

~~3. Current CPR & AED~~

~~B. Maintain State First Responder, but National Registry First Responder lapsed~~

~~1. Refresher with practical evolutions as specified by National Registry~~

~~2. National Registry First Responder written exam~~

~~C State First Responder and National Registry First Responder lapsed within two years~~

~~1. DOT First Responder Refresher~~

~~2. State approved practical~~

~~3. National Registry First Responder exam~~

~~D. State First Responder and National Registry First Responder lapsed greater than 2 years: Must take entire First Responder Course~~

1. Individuals desiring certification as a First Responder after the expiration date of their certification may do so providing the following conditions are met.

a. Card expired 18 months or less

b. Attend approved refresher course

c. Show proof of current AED/CPR

Certification
d. Submit all required applications and paperwork to Delaware State Fire School

2. Individuals whose card has expired more than 18 months must attend a complete First Responder Training course.

3. Individuals desiring to regain National Registry Registration must follow the policies of the National Registry.

E. Testing procedures Delaware First Responder

1. Initial testing and retesting for First Responders will follow the guidelines set forth by Delaware State Fire School.

G. Reciprocity

1. First Responders from other state must submit a request
2. Show proof of attending a DOT curriculum
3. Obtain CPR/AED as approved by Delaware State Fire Prevention Commission
4. Challenge practical examinations as determined by the Delaware State Fire School
5. Challenge the State First Responder Examination

DEPARTMENT OF AGRICULTURE PESTICIDES SECTION

Statutory Authority: 3 Delaware Code,
Section 1237 (3 **Del.C.** §1237)

NOTICE

The State of Delaware, Department of Agriculture, will hold a public hearing on April 28, 2004, 6 p.m., in the Conference Room, Delaware Department of Agriculture Building, 2320 S. Dupont Hwy., Dover, DE.

The hearing is being held for the purpose of receiving information, factual evidence, and public reaction as it relates to proposed amendments to the Pesticide Regulations under **Title 3, Delaware Code**, Chapter 12, Pesticide Law. The hearing will be conducted in accordance with **Title 29**, Chapter 101, Administrative Procedures Act.

Beginning at 6 p.m., comments will be received relating to the numerous grammatical corrections proposed throughout the current regulations. The proposed amendments include a revised format of numerically coded paragraphs. Substantive changes under the proposed amendment include further restrictions on the distribution of restricted use pesticides (paragraph 14.2.1.2); and additional prohibitions on the open burning of any pesticides or pesticide containers (16.1.1.3).

Title 3, Delaware Code, Section 1237, provides the Department with the authority to issue regulations pursuant to this statute.

Interested parties may obtain a copy of the proposed amendments by calling the Department at 1-800-282-8685; by writing the Delaware Department of Agriculture, 2320 S. Dupont Hwy., Dover, DE 19901; or, by visiting the Register of Regulations site at: <http://www.delregs.state.de.us/index.html>.

801 Pesticide Rules and Regulations

1.0 General

1.1 Scope

1.1.1 These regulations establish general operating rules and procedures for the enforcement of the Delaware Pesticide Law, including but not limited to the certification of users of restricted and general use pesticides.

1.2 Authority

1.2.1 These regulations are issued under the authority of Title 3 Part II Chapter 12 of the Annotated Code of Delaware.

1.3 Effective Date

1.3.1 These regulations were amended on ~~June 15, 2000~~ (new date to be entered), in accordance with Title 29, Chapter 101, Annotated Code of Delaware

1.4 Filing Date

1.4.1 These regulations were filed in the Office of the Secretary of State on ~~June 15, 2000~~ (new date to be entered).

2.0 Declaration of Policy

2.1 3 **Del.C.** Chapter 12, Section 1237, places the enforcement of the Delaware Pesticide Law with the Department of Agriculture and empowers the Department to establish regulations.

2.2 By virtue of the authority vested in me as Secretary of Agriculture by 3 **Del.C.** Chapter 12, I, ~~John F. Tarburton~~ Michael T. Scuse, Secretary of Agriculture, do hereby promulgate the following rules and regulations governing the sale, use and application of pesticides in Delaware.

3.0 Definitions

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. All terms defined by the Delaware Pesticides Law (3 **Del.C.** Chapter 12) are hereby incorporated by reference in this regulation.

"Accident" means an unexpected, undesirable event resulting in the presence of a pesticide that adversely affects man or the environment.

"Brand" means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

"Certification" means the recognition by the Department that a person has met the qualification standards established under Section 8 or Section 9 of these regulations and has been issued a written certificate from the Department authorizing them to use pesticides for the specified type(s) of pest control.

"Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and associated responsibility.

"Fumigant" means a gaseous or readily volatilizable chemical (such as hydrogen cyanide or methyl

bromide) used as a pesticide.

“Fumigation” means the application of a fumigant to one or more rooms in a structure, or to the entire structure, or to a localized space within a structure or outside a structure, such as a box car, aircraft, truck, ship or any object sealed or covered. Excluded is the use of a fumigant in or on the soil.

“Grade” means a formulation of a pesticide, except that the addition of pigments solely for coloration shall not constitute a change in formulation such as to constitute a new grade requiring registration.

“Handle pesticides” means to mix, load, apply, or dispose of pesticides.

“Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible illness or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed in Section 261.31, 261.32 and 261.33 of the State of Delaware Hazardous Waste Regulations and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the State of Delaware Hazardous Waste Regulations.

“Law” means the Delaware Pesticide Law, 3 Del.C. Chapter 12.

“Regulated pest” means a specific organism considered by the state or by a Federal Agency to be a pest requiring regulatory restrictions, regulations or control procedures in order to protect man or the environment.

“Service vehicle” means any vehicle used by a licensee to transport pesticides for the purpose of their application.

4.0 Registration

4.1 Product Registration

4.1.1 Every pesticide which is distributed within the State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Secretary subject to the provisions of this law. Registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part of a pesticide which is registered under the provision of an experimental use permit issued by the U.S. Environmental Protection Agency.

4.1.2 An applicant for registration for a pesticide which is federally registered shall file a statement with the Secretary which shall include:

4.1.2.1 The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's.

4.1.2.2 The name of the pesticide.

4.1.2.3 Other necessary information required for completion of the Department's application for registration form.

4.1.2.4 A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.

4.1.2.5 The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act", as amended.

4.1.2.6 The EPA product registration number.

4.1.3 The applicant desiring to register a pesticide shall pay a biennial registration fee of seventy dollars (\$70.00) to the Delaware Department of Agriculture for each brand or grade of pesticide to be registered for ~~such~~ the applicant. All registrations shall continue in effect until June 30 of the year in which they expire. Applications received between January 1 and June 30 shall be registered for the upcoming two year period. Applications received between July 1 and December 31 will be registered for a two year period beginning July 1 of the year in which the application was received.

4.1.4 Any registration approved by the Secretary and in effect on June 30, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until suspended, or otherwise denied in accordance with the provisions of Section 1205 of the LAW. Forms for registration shall be mailed to registrants at least forty-five days prior to the due date.

4.1.5 If it appears to the Secretary that the composition of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of these regulations, he shall register the pesticide.

4.1.6 Pesticide products that are discontinued by a registrant shall be registered for a period of two years. Said two year limit covers the year in which the item is declared to be discontinued by the registrant and an additional year to permit time to dispose of shelf stock. Should the registrant provide the Department with written notification that shelf stocks of the product are depleted, the products shall be exempt from the two year continued registration period.

4.2 Employee Registration

4.2.1 ~~Every~~ Licensees shall register with the Department all employees who handle pesticides. Registration shall be made when making an application for a license or within 30 days after employment. The fee for

registering ~~each~~ an employee shall be \$25.00. However, the employee registration fee shall be waived ~~for any employee registration~~ if ~~that~~ the employee is certified under the LAW.

4.2.2 ~~Each~~ Licenses shall be responsible for insuring that all employees handling pesticides (other than a certified applicator) have successfully completed a training program approved by the Department. ~~Such~~ This training shall be completed within 30 days of employment and before the employees ~~is~~ are registered with the Department.

4.2.2.1 The Department will not approve any training program that does not include the following subjects:

- 4.2.2.1.1 Pesticide Law and Regulations;
- 4.2.2.1.2 Label comprehension;
- 4.2.2.1.3 Safety and emergency procedures;
- 4.2.2.1.4 Proper pesticide handling, storage and disposal;
- 4.2.2.1.5 Pest identification and control procedures;
- 4.2.2.1.6 Pesticide application techniques;
- 4.2.2.1.7 Environmental and health concerns; and
- 4.2.2.1.8 Integrated pest management principles

4.2.2.2 Upon request by the Department, each licensee shall provide written verification that an employee has completed an approved training program.

4.2.3 ~~The name and address of each such employee shall be provided to the Department by the licensee. The Department shall issue a registration card to those registered. This registration card shall bear the name and license number of the employee and shall become null and void upon termination of employment with the licensee. The name and address of employees who have been trained according to this Section shall be provided to the Department by the licensee. The Department shall issue a registration card bearing the employee's name and the licensee's name, address and license number. The employee registration shall become null and void upon termination of employment with the licensee.~~ This card is to be carried by the employee during working hours and is to be displayed upon request.

4.2.4 ~~Written notification of employment termination of this registered employee with the licensee shall be made to the Department within 30 days subsequent to termination. The licensee shall provide the Department written notification of a registered employee's employment termination within 30 days of the effective date of termination.~~

4.2.5 The Department, after due notice, and opportunity for a hearing may deny, suspend or revoke an employee registration, if the Department finds the registered employee has committed any violations of the LAW.

4.2.6 The Department, after due notice and

opportunity for a hearing, may deny an application for employee registration, if the applicant has committed any violations under the Law.

5.0 Licensing

5.1 Applicants for a business license shall complete a signed and notarized application form prescribed by the Department.

5.2 All business license applicants shall pay an annual fee of \$50.00, or a biennial fee of \$100.00.

5.3 No license shall be issued to any person, nor shall it remain valid, unless such person is certified or has a certified applicator in his employ at all times.

5.4 For applicants or holders of a license in categories 7.1.1, 7.2, or 7.7.1.1 - 7.7.1.3, at least one person designated as a certified applicator under the license shall meet the experience requirement of §1207(c)(1) of the LAW.

5.5 All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license with the exception of categories: 7.1.1 Agriculture Plant Pest Control; 7.1.2 Agriculture Animal Pest Control; 7.2 Forest Pest Control; 7.4 Seed Treatment; 7.5 Aquatic Pest Control; 7.8 Public Health Pest Control; 7.9 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.

6.0 Restricted Use Pesticides Classification

Restricted use pesticides shall be classified in the State of Delaware to conform to the current listing of pesticides classified by the EPA as Federally ~~registered use products~~ Restricted Use Pesticides.

7.0 Categorization of Commercial Applicators

Categories and subcategories of applicators (other than private applicators) who use or supervise the use of pesticides are identified below.

7.1 Agricultural Pest Control Category

7.1.1 Agricultural Plant - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of agricultural crops, including without limiting the following: feed grains, soybeans, forage, vegetables, small fruits and tree fruits; as well as on grasslands and non-crop agricultural lands.

7.1.2 Agricultural Animal - This subcategory includes commercial applicators using or supervising the use of pesticides on swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, or publicly holding themselves out as pesticide applicators or engaged in large scale use are included in this category.

7.1.3 Fumigation of Soil and Agricultural Products - This subcategory includes commercial applicators using or supervising the use of pesticides for soil fumigation in the production of an agricultural commodity and/or for fumigation of agricultural products in storage or transit.

7.2 Forest Pest Control Category

7.2.1 This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed producing areas.

7.3 Ornamental and Turf Pest Control Category

7.3.1 This category includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

7.4 Seed Treatment Category

7.4.1 This category includes commercial applicators using or supervising use of pesticides on seeds.

7.5 Aquatic Pest Control Category

7.5.1 Aquatic Weed - This subcategory includes commercial applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities.

7.5.2 Antifouling Paint - This subcategory includes commercial applicators using or supervising the use of any anti-fouling paints for the protection of boat hulls. This subcategory also includes applicators using or supervising the use of anti-fouling paints on containers which they sell, lease, or use for the purpose of harvesting shellfish.

7.5.3 Mosquito Control - This subcategory includes applicators using or supervising the use of pesticides for the management and control of mosquitoes.

7.6 Right-of-way Pest Control Category

7.6.1 This category includes commercial applicators using or supervising the use of pesticides in the maintenance of roads, electric power lines, pipelines, railway rights-of-way or similar areas.

7.7 Industrial, Institutional, Structural and Health Related Pest Control Category

7.7.1 This category includes commercial applicators using or supervising the use of pesticides in, on, or around food handling establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; human dwellings, institutions, such as schools and hospitals, industrial establishments; and for the protection of stored, processed or manufactured products. This category contains the following subcategories:

7.7.1.1 General Pest Control. This subcategory includes commercial applicators who use or supervise the use of pesticides to control household pests, including pests that infest structures, stored products, and residential food preparation areas, and pests that infest or

contaminate food and any stage of processing in food processing facilities. This includes treatment of food processing areas and control of vertebrate structural invaders. This category does not include control of wood-destroying pests, or the use of fumigants.

7.7.1.2 Wood Destroying Pest Control. This subcategory includes commercial applicators using or supervising the use of pesticides, other than fumigants, in or around structures for the prevention, suppression, or control of wood destroying organisms.

7.7.1.3 Fumigation Pest Control (non-agricultural). This subcategory includes commercial applicators using or supervising the use of fumigant pesticides to control pests in structures other than soils and agricultural products/commodities.

7.7.1.4 Wood Preservatives. This subcategory includes commercial applicators using or supervising the use of pesticides for the preservation of wood or wood products. This would include, but not be limited to, the pressure treatments, non-pressure treatments, or brush-on applications with wood preservatives. Commercial applicators certified in another category of pest control and who use or supervise the use of wood preservatives on an incidental basis may apply these products under their current certification. Private applicators using wood preservative products for purposes related to agricultural production may also apply wood preservatives under their current certification.

7.7.1.5 Institutional and Maintenance Pest Control. Except as otherwise provided in these regulations, this subcategory includes any individual using pesticides on a property they own, or are employed or otherwise engaged to maintain, including but not limited to janitors, general maintenance personnel, sanitation personnel, and grounds maintenance personnel. This subcategory does not include private applicators as defined in Section 9 below, individuals who use anti-microbial pesticides, or individuals who use pesticides which are not classified as "restricted use pesticides" in or around their dwelling.

7.7.1.6 Cooling Tower Pest Control. This subcategory includes commercial applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers or related areas.

7.7.1.7 Miscellaneous Pest Control. This subcategory includes commercial applicators using or supervising the use of pesticides in a category not previously covered in these regulations.

7.8 Public Health Pest Control Category. This category includes, but is not limited to, State, Federal and other governmental employees who use or supervise the use of pesticides in public health programs for the management and control of pests having medical or public health importance.

7.9 Regulatory Pest Control Category. This category includes State, Federal and other governmental employees

who use or supervise the use of restricted use pesticides in the control of regulated pests.

7.10 Demonstration and Research Pest Control Category

7.10.1 This category includes:

7.10.1.1 Individuals who demonstrate to the public the proper use and technique of application of a restricted use pesticide or supervises such demonstrations, and/or

7.10.1.2 Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are ~~such~~ persons such as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes State, Federal, commercial and other persons conducting field research when utilizing pesticides.

8.0 Standards for Certification of Commercial Applicators

8.1 Determination of Competency.

8.1.1 Competence in the use and handling of pesticides shall be determined on the basis of written examinations, and, as appropriate, performance testing, based upon standards set forth below and which are approved by the Secretary. ~~Such e~~Examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory (if any) in which an applicator is to be certified. All examinations shall be administered as closed book examinations.

8.1.2 Applicants for examination shall register at least one (1) week before the scheduled examination date.

8.1.3 Exams shall be scheduled quarterly during the calendar year and shall be given at such times and places as the Secretary may direct.

8.1.4 Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

8.1.5 Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. Applicants may apply for one (1) reexamination scheduled at least thirty (30) days after their initial examination. No person shall be permitted to be examined in the same category or subcategory more than twice in any twelve (12) month period.

8.2 General Standards for All Categories of Certified Commercial Applicators.

8.2.1 All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification and the following areas of

competency:

8.2.1.1 Label & Labeling Comprehension

8.2.1.1.1 The general format and terminology of pesticide labels and labeling;

8.2.1.1.2 The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

8.2.1.1.3 Classification of the product, general or restricted; and the necessity for use consistent with the label.

8.2.1.2 Safety

8.2.1.2.1 Pesticides toxicity and hazard to man and common exposure routes;

8.2.1.2.2 Common types and causes of pesticides accidents;

8.2.1.2.3 Precautions necessary to guard against injury to applicators and other individuals in or near treated area;

8.2.1.2.4 Need for and use of protective clothing and equipment;

8.2.1.2.5 Symptoms of pesticide poisoning;

8.2.1.2.6 First aid and other procedures to be followed in case of a pesticide accident; and

8.2.1.2.7 Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

8.2.1.3 Environment

8.2.1.3.1 The potential environmental consequences of the use and misuse of pesticides as may be influenced by ~~such~~ factors such as:

8.2.1.3.1.1 Weather and other climatic conditions;

8.2.1.3.1.2 Types of terrain, soil or other substrate;

8.2.1.3.1.3 Presence of fish, wildlife and other non-target organisms; and

8.2.1.3.1.4 Drainage patterns.

8.2.1.4 Pests

8.2.1.4.1 Factors such as:

8.2.1.4.1.1 Common features of pest organism and characteristics of damage needed for pest recognition;

8.2.1.4.1.2 Recognition of relevant pests; and

8.2.1.4.1.3 Pest development and biology as it may be relevant to problem identification and control.

8.2.1.5 Pesticides

8.2.1.5.1 Factors such as:

8.2.1.5.1.1 Types of pesticides;

8.2.1.5.1.2 Types of formulations;

8.2.1.5.1.3 Compatibility, synergism, persistence and animal and plant toxicity of the formulations;

8.2.1.5.1.4 Hazards and residues associated with use;

8.2.1.5.1.5 Factors which influence effectiveness or lead to ~~such~~ problems such as resistance to pesticides; and,

8.2.1.5.1.6 Dilution procedures.

8.2.1.6 Equipment

8.2.1.6.1 Factors including:

8.2.1.6.1.1 Types of equipment and advantages and limitations of each type; and

8.2.1.6.1.2 Uses, maintenance and calibration.

8.2.1.7 Application Techniques

8.2.1.7.1 Factors including:

8.2.1.7.1.1 Methods or procedures used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;

8.2.1.7.1.2 Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

8.2.1.7.1.3 Prevention of drift and pesticide loss into the environment.

8.2.1.8 Laws and Regulations

8.2.1.8.1 Factors including:

8.2.1.8.1.1 Applicable State and Federal laws and regulations.

8.3 Specific Standards for Competency for Each Category of Commercial Applicators

Some of the factors referenced in this section are of particular importance because of the different types of activities carried out by the applicators in each category. For example, practical knowledge of drift problems should be required of agricultural applicators but not seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below.

8.3.1 Agricultural Pest Control Category

8.3.1.1 Agricultural Plant Pest Control Subcategory

8.3.1.1.1 Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of ~~such~~ competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals,

phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

8.3.1.2 Agricultural Animal Pest Control Subcategory

8.3.1.2.1 Applicators applying pesticides directly to animals must demonstrate practical knowledge of ~~such~~ animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

8.3.1.3 Fumigation of Soil and Agricultural Products Subcategory

8.3.1.3.1 Applicators must demonstrate knowledge of application techniques appropriate to soil fumigation and agricultural product fumigation. This includes the use of personal protective clothing and equipment, and general safety procedures such as posting, reentry, aeration, and accident procedures.

8.3.2 Forest Pest Control Category

8.3.2.1 Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and forest seed production in Delaware and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

8.3.3 Ornamental and Turf Pest Control Category

8.3.3.1 Applicators shall demonstrate knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

8.3.4 Seed Treatment Category

8.3.4.1 Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface-active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

8.3.5 Aquatic Pest Control Category

8.3.5.1 Aquatic Weed. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this subcategory. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall also demonstrate practical knowledge of the principles of limited area application.

8.3.5.2 Antifouling Paint. Applicators in this subcategory shall demonstrate practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of marine anti-fouling paints. They shall demonstrate practical knowledge of the term "acceptable release rate" as it applies to organotin paints; knowledge of the types of paints approved for specific hull types; knowledge of the types of anti-fouling paints approved for use on equipment or containers used for the harvesting of shellfish; knowledge of potential environmental consequences from the use/misuse or improper disposal of pesticides; safety precautions necessary to avoid exposure of workers to anti-fouling paints; proper storage, handling, and disposal methods of paint chips and dusts suspected of containing organotin compounds; marine pests and relevant life cycles which are controlled through the application of anti-fouling paints; methods, procedures, and equipment used in applying organotin and anti-fouling paints; applicable State and Federal laws and regulations; and recordkeeping requirements under the Delaware Pesticide Law.

8.3.5.3 Mosquito Control. Applicators shall demonstrate a practical knowledge of the principles associated with the management of mosquitoes, including all of the following: their life cycle; types of formulations appropriate for their management; methods of application; possible effects on water quality; and, the potential health effects on humans in the target area.

8.3.6 Right-of-way Pest Control Category

8.3.6.1 Applicators shall demonstrate a practical knowledge of a wide variety of environments, since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of

problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

8.3.7 Industrial, Institutional, Structural and Health Related Pest Control Category

8.3.7.1 Applicators in this category must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulation appropriate for their control, and methods of application that avoid contamination of food, contamination of habitat, and the exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure. Because health related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activity.

8.3.7.1.1 General Pest Control Subcategory

8.3.7.1.1.1 Applicators must demonstrate knowledge of household pests including but not limited to: pests that invade or infest structures, stored products, and residential food preparation areas; pests that infest or contaminate foods and foodstuffs at any stage of processing in the food manufacturing and processing areas of operation including but not limited to: flour mills, bakeries, bottling plants, dairies, canneries, meat packing plants, supermarkets, convenience stores, rest homes, hospitals, ships, vehicles, restaurants, cafeterias, and snack bars; conditions conducive to infestations and selection of appropriate control procedures, other than fumigation for each situation; and hazards associated with pesticides in food manufacturing and processing.

8.3.7.1.2 Wood Destroying Pest Control Subcategory

8.3.7.1.2.1 Applicators must demonstrate knowledge of organisms that destroy structures made of wood including but not limited to beetles, termites and fungi, and conditions conducive to infestation; selection, calibration, and use of appropriate control procedures and their related equipment including: rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood; hazards involved in the handling and use of these pesticides.

8.3.7.1.3 Fumigation (Non-agricultural) Subcategory

8.3.7.1.3.1 Applicators must demonstrate a practical knowledge of the conditions

requiring the application of fumigants, and the selection of the most appropriate fumigation methods to use; equipment used in fumigation including but not limited to application, monitoring, testing, calculating, and personal protective devices; release, distribution, and maintenance of the correct fumigant concentrations for the product being used and the structure being fumigated under differing conditions; and hazards involved in the use of fumigants.

8.3.7.1.4 Wood Preservative Subcategory

8.3.7.1.4.1 Applicators must demonstrate a practical knowledge of the pests involved with wood products, including their life cycles, wood degradation, the pesticides available for controlling such problems, and methods of application including pressure, non-pressure and brush-on treatments. Since there is concern regarding the potential for environmental contamination as well as acute and chronic health problems from applicator exposure when using certain woodtreating pesticides, specific emphasis will be placed upon demonstrating a practical knowledge of the product use, precautions which are required and found on the labels and labeling of these pesticides and include protective clothing and equipment, sanitation procedures, disposal procedures and environmental precautions. Since treated wood products present potential environmental problems and acute and chronic exposure problems to the users and the general public, whether or not they come into direct contact with the treated wood, applicators must demonstrate a practical knowledge of the consumer information covering use, site, and handling precautions which are found in the Consumer Information Sheets of products registered for pressure treatment and in the labeling for products registered for sap and stain control, ground line treatment of utility poles, and home and farm use (including railroad tie repair).

8.3.7.1.5 Institutional and Maintenance Subcategory

8.3.7.1.5.1 Applicators in this subcategory must demonstrate a practical knowledge of a wide variety of pests for the purpose of providing structural pest control or lawn pest control in and around schools, hospitals, nursing homes, child day-care centers, and apartment buildings. Since children and elderly people have a potentially higher sensitivity to pesticides, applicators in this subcategory should be particularly knowledgeable in avoiding applications which may lead to a hazardous condition, including continuous exposure.

8.3.7.1.6 Cooling Tower Subcategory

8.3.7.1.6.1 Applicators shall demonstrate a practical knowledge of the labeling instructions, safety precautions and environmental concerns associated with the use of pesticides to treat the waters of cooling towers. They must demonstrate an understanding of the following: the effects of tower operation upon cooling water composition; the importance and potential harm of

discharge of exhaust water into environment waters, the steps that can be taken to minimize water-caused problems, the importance of diligence and control in the execution of cooling water treatment programs.

8.3.7.1.7 Miscellaneous Subcategory

8.3.7.1.7.1 Applicator must demonstrate knowledge appropriate to their specific field of pest control.

8.3.8 Public Health Pest Control Category

8.3.8.1 Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests are involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods such as sanitation, waste disposal, and drainage.

8.3.9 Regulatory Pest Control Category

8.3.9.1 Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use of pesticides used in suppression and eradication programs.

8.3.9.2 They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

8.3.10 Demonstration and Research Pest Control Category

8.3.10.1 Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticides uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide - organism interactions and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in section 8.02 above. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

8.3.10.2 Persons conducting field research or

method improvement work with restricted use pesticides should be expected to know the general standards detailed in 8.2 above. In addition, they shall be expected to know the specific standards required for paragraph 8.3.1.1 through 8.3.1.9 of this section, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

8.4 Certification Fees and Renewal

8.4.1 Certification Fees

8.4.1.1 Commercial applicators shall pay an annual certification fee of \$20.00. All certifications shall continue in full force until December 31st of each year whereupon they shall become invalid unless renewed, except that a certification for which a renewal application has been submitted to the Department by November 30th, shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial. Applications for renewal shall be mailed to all certified applicators by the Department before October 1st of each year.

8.4.1.2 Federal, State or Local government employees who are certified under this law are exempt from this fee. This exemption shall remain valid only when applying or supervising the application of pesticides for such governmental agencies.

8.4.2 Certification Renewal

8.4.2.1 Commercial Applicators

8.4.2.1.1 Commercial applicators shall be required to be reexamined through a written test prior to their annual certification renewal.

8.4.2.1.2 The reexamination requirement may be satisfied without taking a test, if the commercial applicator provides the Department with evidence that he has completed a specified minimum number of hours attending approved education courses, seminars or programs during the three calendar years preceding certification renewal. The specified number of hours for each category are listed in paragraph 8.4.2.1.4 below. This exemption from reexamination does not apply to a person holding a lapsed certificate, as described in paragraph 8.4.2.3 below.

8.4.2.1.3 A commercial applicator shall be exempt from the reexamination requirement for the first two certification renewals following his original certification in Delaware.

8.4.2.1.4 The number of hours of training required to fulfill paragraph 8.4.2.1.2 are specified as follows:

Category of Pest Control	Hours
Agricultural Plant (1A)	8
Agricultural Animal (1B)	4
Fumigation of Soils and	
Agricultural Commodities (1C)	4
Forest (02)	4
Ornamental & Turf (03)	8

Seed Treatment (04)	2
Aquatic (5A)	4
Antifouling Paint (5B)	2
Mosquito (5C)	4
Right-of-Way (06)	4
Industrial, Institutional, Structural & Health Related (07)	
General Pest Control (7A)	18
Wood Destroying Pest Control (7B)	18
Fumigation Pest Control (non-agricultural) (7C)	4
Wood Preservatives (7D)	4
Institutional and Maintenance (7E)	18
Cooling Towers (7F)	4
Miscellaneous (7G)	4
Public Health (08)	4
Regulatory (09)	4
Demonstration & Research (10)	8

8.4.2.2 Private Applicators

8.4.2.2.1 A private applicator's certification shall continue in full force until December 31st of the third year following his original certification.

8.4.2.2.2 A private applicator shall be required to be reexamined prior to certification renewal.

8.4.2.2.3 The reexamination requirement may be satisfied without taking a test, if the applicator provides the Department with evidence that he has attended a minimum of three (3) hours of approved education courses, seminars or programs during the three (3) calendar years preceding certification renewal.

8.4.2.3 Expiration

8.4.2.3.1 A certificate shall have a ninety (90) day grace period after the date of expiration. When the grace period expires, the certificate shall be considered to have lapsed.

8.4.2.3.2 A person holding a lapsed certificate must be examined as described by paragraph 8.01, in order to receive a new certificate.

8.4.2.3.3 An applicator is not imparted the right to purchase, use or supervise the use of a restricted use pesticide during the ninety (90) day grace period following the expiration date on his certificate.

8.5 Exemptions

8.5.1 The above standards do not apply to the following persons for the purposes of these regulations:

8.5.1.1 Persons conducting laboratory type research involving restricted use pesticides; and

8.5.1.2 Doctors of Medicine, Doctors of Osteopathy, and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

8.5.1.3 Owners and employees of any child day-care center which is operated within a private home.

9.0 Standards for Certification of Private Applicators

9.1 As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of the pest problem and pest control practices associated with his agricultural operations and his related legal responsibility. This practical knowledge includes ability to:

9.1.1 Recognize common pests to be controlled and damage caused by them.

9.1.2 Read and understand the label and labeling information - including the common name of pesticides he applies; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and specific disposal procedures.

9.1.3 Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

9.1.4 Recognize local environmental situations that must be considered during application to avoid contamination.

9.1.5 Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

9.2 ~~Such~~ The competence of each private applicator shall be verified through the administration of a private applicator certification system here described which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticides under limitations of applicable State and Federal laws and regulations. One or more of the following options will be employed to certify private applicators:

9.2.1 General Certification

9.2.1.1 This option certifies the private applicator as competent to apply any restricted use pesticide which he would normally expect to use in his particular agricultural operations. Competency determination shall reflect all aspects of the private applicator standards and shall be broad enough to test the private applicator's ability to apply general principles to specific problems associated with the restricted use pesticides required for the production and protection of his crops.

9.2.2 Pesticide Class Certification

9.2.2.1 This option certifies the private applicator as competent to apply any restricted use pesticide products and all different formulations of a pesticide used for the same purpose, use, or application. Examples include, but are not limited to, preemergence herbicides for vegetable crops, foliar insecticides on corn, rodenticides in fruit orchards, nematicides in fields prior to planting, ground application of fungicides on vegetables, seed treatments for plant diseases, and livestock dips for insect control.

9.2.2.2 Competency determination shall reflect the full range of the private applicator standards, but with special emphasis placed on the particular characteristics of the pesticide class, as well as the nature of the application or use.

9.2.3 Commodity/Crop/Site Certification

9.2.3.1 This option certifies the private applicator as competent to apply any restricted use pesticide needed for specific crops or sites ~~which~~ that the applicator would be expected to deal with in his agricultural operations. This would include any pesticide products (different pesticide classes, active ingredients, and formulations) used on a specific line or class designation. Examples include: single crop such as corn, apples, or wheat; single site class such as poultry houses or dairy barns; single livestock line, such as beef cattle, swine, or turkeys; crop classes such as forage crops or small fruits, site class such as barns or greenhouses; and livestock class such as poultry.

9.2.3.2 Competency determination shall reflect the full range of the private applicator standards, with emphasis placed on the particular characteristics of the specific crop or site, or crop/site class concerned and the pests involved.

9.2.3.3 A private applicator may wish to be certified for a specific crop or site (such as corn or beef cattle) or for a crop or site class (such as forage crops, livestock, small grain crops).

9.2.4 Single Product Certification

9.2.4.1 This option certifies as competent the private applicator for one or more uses of a single product or related products with the same active ingredient and with a similar formulation and uses. Competency determination shall reflect all appropriate uses of these products for the agricultural area where he will be expected to make pesticide application.

9.2.5 Single Products/single Use Authorization (Emergency Program)

9.2.5.1 This option would authorize the private applicator to make single use application(s) of a restricted use product (or other products of the same formulation). This option will be used only as an emergency provision to accommodate situations such as an unexpected pest problem that requires immediate certification of a previously uncertified private applicator or one whose particular type of certification would not cover the product needed to deal with the problem.

9.3 Determination of Competency for Private Applicators

9.3.1 Competence in the use and handling of pesticides by private applicators shall be determined by written examinations with questions based upon study materials made available by the Department. Correctly answering 70% or more of the questions shall be considered to be satisfactory evidence of competence.

9.3.2 Failure to answer at least 70% of the questions correctly shall be grounds for denial of certification. The applicant may apply for reexamination, which shall be scheduled by the Department at least 30 days after the applicant's initial examination.

9.3.3 Upon showing of hardship, an applicant for private applicator certification may appeal to the Secretary for an exception to paragraphs 9.3.1 and 9.3.2. At his discretion, the Secretary may provide for an alternative means of examination, to include but not be limited to oral examination. Oral examinations shall cover the same material included in the written examination.

10.0 Standards for Supervision of Non-certified Applicators by Certified Private and Commercial Applicators

10.1 Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

10.2 The availability of the certified applicator must be directly related to the hazard of the situation, the complexity of the application or the ability to readily communicate with the non-certified applicator. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instructions to the competent person, as follows:

10.2.1 Detailed guidance for applying the pesticide properly, and

10.2.2 Provisions for contacting the certified applicator in the event he is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

11.0 Federal Agency Pesticide Applicators

11.1 When an employee of any agency of the United States Government has been qualified in any category as competent to apply restricted use pesticides under the Government Agency Plan (GAP) or under other plans judged by the Secretary to be at least equal to the Delaware Plan, ~~such~~ the employee will be certified by the Secretary in the same category without the need for a written examination nor for the payment of any fee.

11.2 Federal employees qualified under an acceptable Federal Plan to apply restricted use pesticides and who intend to apply restricted use pesticides in Delaware as a part of their agency work shall present their qualifying documents to the Secretary and, if acceptable, these documents will be endorsed or a state document will be issued which will permit the federal employee to use restricted use pesticides in Delaware.

11.3 If, in an emergency situation, federal

employees are brought into Delaware to control or eradicate pests and when these employees have been properly qualified to use restricted use pesticides under the plan of another state or under an acceptable federal government agency plan, ~~such~~ these employees shall be considered to be certified in Delaware ~~and he or his~~ for a period of 10 days. Within this 10 day period their agency must, ~~within 10 days,~~ present qualifying credentials to the Secretary and ~~at this~~ that time state credentials will be issued if the employees ~~is~~ are to remain in Delaware as ~~an~~ applicators of restricted use pesticides.

11.4 The provisions of this section do not apply to non-federal employees contracted to perform pesticide application for the federal government. In an emergency, however, and with the concurrence of the Secretary, a non-certified person may apply pesticides under the direct supervision of a properly certified federal applicator. Within 10 days such person working within the state boundaries must apply for Delaware certification in the normal manner.

12.0 Reciprocity

When a commercial applicator is certified under the state plan of another state and desires to operate as a commercial applicator in Delaware he shall make application to the Secretary and shall include, along with the proper fee and other details required by the LAW, a true copy of his credentials certifying him as an applicator of restricted use pesticides in another state. The Secretary then may, if he approves the credentials, issue a Delaware certification to the applicator in the appropriate classification ~~and/or~~ category(ies) for which he is certified in another state without a written examination. The original certification must be made in the state where the commercial applicator resides or where he has his principle place of business.

13.0 Revocation

The Department, after due notice and opportunity for a hearing, may deny, suspend, revoke or modify any application for or provision of any certification, including reciprocal certification, under the LAW if the Department finds that the Certified Applicator or the applicant for Certification has committed any act or acts declared by the Law or these regulations to be unlawful.

14.0 Records

14.1 Commercial Applicators

14.1.1 Commercial applicators shall, for a period of two years from the date of application, keep records detailing the application of any pesticides to include:

14.1.1.1 The brand name of the pesticide used.

In the case of a Restricted Use Pesticide or a pesticide which is used under the provisions of 40 **Code of Federal Regulations**, Part 170, Worker Protection Standards, the EPA Registration Number shall also be recorded at or before

the time of application.

14.1.1.2 When applicable, the dilution rate of the pesticide and the amount of diluted material applied per unit (i.e. gallons/acre, lbs./acre, etc.)

14.1.1.3 The date and specific area treated.

14.1.1.4 The pest against which the pesticide was used.

14.1.1.5 The applicator's name, and when applicable, the name of the certified applicator responsible for his supervision.

14.1.1.6 When label directions advise precaution in regard to drift, on-site weather conditions to include:

14.1.1.6.1 Wind velocity and direction

14.1.1.6.2 Temperature

14.1.1.6.3 Relative humidity

14.1.1.7 In addition to the above record keeping requirements, the applicator shall have available at the site of application, a copy of the label of the pesticide being used. Upon request, the applicator shall provide any interested person at or adjacent to the application site, with any information contained on the pesticide label.

14.2 Restricted Use Pesticides Dealers

14.2.1 Restricted use pesticide dealers shall keep and maintain for a period of two years, records on the sale or other disposition of restricted use pesticides to include the following:

14.2.1.1 The name and address of the residence or principal place of business of the certified applicator to whom the pesticide is made available for use.

14.2.1.2 The certification identification number of the purchaser or receiver of the pesticide on the document. If the receiver of the restricted use pesticide is other than a certified applicator, a form of photographic identification of the receiver must be presented at the time of delivery.

14.2.1.3 The product name and E.P.A. registration number on the label of the pesticide.

14.2.1.4 The quantity of the pesticide made available for use in the transaction.

14.2.1.5 Date of the sale or transaction.

15.0 Financial Security Required of Licensee

15.1 The Secretary shall not issue a license until the applicant has filed evidence of financial security with the Secretary. ~~Such~~ ~~e~~vidence shall consist of a general liability insurance policy with completed operation coverage or certification thereof from an insurance company, person, or risk retention group formed under the Federal Risk Act of 1986, authorized to do business in Delaware.

15.1.1 Agriculture

15.1.1.1 Plant Pest Control

15.1.1.1.1 An applicant for certification in this category shall file evidence of financial security in the

minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.1.2 Agriculture Animal Pest Control

15.1.1.2.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.2 Forest Pest Control

15.1.2.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.3 Ornamental and Turf Pest Control

15.1.3.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.4 Seed Treatment

15.1.4.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.5 Aquatic Pest Control

15.1.5.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.6 Right-of-Way Pest Control

15.1.6.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.1.7 Industrial, Institutional, Structural and Health Related Pest Control

15.1.7.1 An applicant for certification in this category shall file evidence of financial security in the minimum amount of Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property

damage resulting from the use or misuse of pesticides.

15.2 Aerial Applicators

15.2.1 Aerial applicators applying for a license in any of the above categories or subcategories shall show evidence of financial security in the minimum of One Hundred Thousand Dollars (\$100,000) for each individual damage and Three Hundred Thousand Dollars (\$300,000) for bodily injury or death for each occurrence and One Hundred Thousand Dollars (\$100,000) for property damage resulting from the use or misuse of pesticides.

15.3 Nothing ~~to~~ in these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the Secretary.

16.0 Storing and Disposal of Pesticides and Pesticide Containers

16.1 Prohibited Acts

16.1.1 No person shall dispose of or store (or receive for disposal or storage) any pesticide, pesticide container or pesticide container residue:

16.1.1.1 In a manner inconsistent with its label or labeling;

16.1.1.2 So as to cause or allow the open dumping of pesticides or pesticide containers;

16.1.1.3 So as to cause or allow open burning of pesticide or pesticide containers. ~~except; the open burning by the user of small quantities of combustible containers (but not to exceed 50 lbs.) containing pesticides other than those containing organic mercury, chlorates, lead, cadmium, or arsenic compounds, is acceptable when allowed by state or local regulations and when due regard is given to wind direction in relation to the protection of crops, animals and people from the pesticide vapors created through burning;~~

16.1.1.4 So as to cause or allow dumping of pesticides in any stream, river, pond, sewer or lake, except in conformance with permits issued by the Delaware Department of Agriculture or other state agency having jurisdiction regarding water pollution;

16.1.1.5 So as to violate any applicable state or federal pollution control standard.

16.2 Pesticide and Pesticide Container Disposal

16.2.1 Pesticide containers shall, upon completion of use, be triple rinsed immediately by the applicator or someone under his direct supervision or cleaned by another method or procedure equivalent in residue removal effectiveness.

16.2.1.1 The standard triple rinse procedure is as follows:

16.2.1.1.1 The emptied container shall be drained for at least thirty (30) seconds after steady flow of pesticide formulation has ceased and after individual drops are evident. Any pesticide formulation drained shall be

added to the spray tank mix and shall be applied in accordance with label instructions.

16.2.1.1.2 A solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.

16.2.1.1.3 The above procedure shall be performed two more times, each time allowing the container to drain at least thirty (30) seconds and adding all rinsate to the spray tank mix to be applied in accordance with label instructions.

16.2.1.2 In cases where undiluted formulations are used and rinsate cannot be added to the spray tank, the residue must be disposed of in accordance with applicable Department of Natural Resources and Environmental Control (DNREC) regulations.

16.2.1.3 Methods of rinsing or cleaning containers, other than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues ~~which~~ that can be disposed of in an environmentally safe manner.

16.2.1.4 In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. The removed liners must be disposed of in a sanitary landfill or by incineration if allowed by State and local authorities. Liners removed from pesticide containers containing pesticides listed as hazardous waste are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent, prior to their removal from the container. These liners must be handled and disposed of in accordance with applicable DNREC regulations.

16.2.1.5 Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to ~~insure~~ ensure they are empty and to prevent re-use. Glass containers are exempt from this puncture requirement. ~~Plastic containers may be burned if allowed by State and local authorities.~~

16.2.1.6 Pesticide containers labeled for commercial or farm use, which have been triple rinsed and handled in accordance with 16.2.1.1 through 16.2.1.5, shall be disposed of at a Solid Waste Facility.

16.2.1.7 Unused or unwanted farm or commercial use pesticides which qualify as hazardous waste

shall be disposed of in accordance with 7 **Del.C.** Chapter 63 and the Delaware Regulations Governing Hazardous Waste.

16.2.1.8 Pesticides ~~and~~ pesticide containers which are not subject to these regulations are as follows:

16.2.1.8.1 Paper, cardboard and fiberboard containers. Storage, handling and disposal must, however, be in accordance with label directions and any applicable DNREC regulations and/or local ordinances. This waiver applies only if all the pesticide contents have been removed from the container using practical methods.

16.2.1.8.2 Aerosol containers and compressed gas cylinders, provided that aerosol containers are disposed of according to the product labeling and the empty compressed gas cylinders are returned for re-use.

16.2.1.8.3 Pesticide containers labeled as returnable, and which are returned to the manufacturer for refill.

16.2.1.8.4 Pesticides and pesticide containers which are intended solely for home and garden use, provided they are securely wrapped in several layers of paper and disposed of singly during routine municipal solid waste disposal.

16.3 Pesticide Storage

16.3.1 Pesticides shall be stored in such a manner so as to prevent the contamination of food, feed and/or water.

16.3.2 Pesticides shall be stored out of the reach of children and so as not to present a public nuisance.

16.3.3 Until such time as the Secretary shall, along with the Pesticide Advisory Committee and any other person as the Secretary may consult, promulgate more specific rules and regulations covering the storage of pesticides and pesticide containers not provided in 16.1 and 16.3 of this Section, the recommended procedures for the storage of pesticides and containers detailed in Regulations promulgated by the Administrator, United States Environmental Protection Agency shall be the recommended procedures for Delaware. The Secretary shall make copies of these procedures available to any person needing guidance for proper storage of pesticides or pesticide containers.

17.0 Pesticide Advisory Committee

17.1 Expenses of Members Not from Government Departments. Pesticide Advisory Committee members not from governmental departments shall submit expense accounts to the Secretary. Reimbursements made to members not from governmental departments shall be made for the actual cost of lodging and meals (out of state) and for transportation according to the regulations applicable to Department employees.

18.0 Application and Equipment

18.1 No person shall apply, dispense or use any pesticide in or through any equipment or application

apparatus unless ~~such~~ the equipment or application apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material; all pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall not leak pesticide; all spray distribution systems shall not leak pesticides and any pumps which ~~such~~ the systems may have shall not leak pesticides and any pumps which ~~such~~ the systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge; and all pesticide application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over non-target areas without contaminating them.

18.2 All hoses, pumps or other equipment used to fill pesticide handling, storage or application equipment shall be fitted with an effective valve or device to prevent backflow of pesticides or pesticide use-dilutions into water supply systems, streams, lakes, ground water other sources of water ~~or other materials~~. Provided, however, ~~such~~ backflow devices or valves are not required for separate water storage tanks used to fill agricultural pesticide application equipment by gravity systems when the fill spout, tube or pipe is not allowed to contact or fall below the water level of the application equipment being filled and no other possible means of establishing a backsiphon or backflow exists.

19.0 Antifouling Paint Restrictions

19.1 For the purposes of this section, the following definitions shall apply:

"**Acceptable release rate**" means a measured release rate not to exceed 4.0 micrograms per square centimeter per day and as further defined in the Organotin Anti-fouling Paint Control Act of 1988, (Pub. L. - 100-333).

"**Antifouling paint**" means a coating, paint, or treatment that is applied to a vessel or any fishing gear used to catch shellfish or finfish to control fresh water or marine fouling organisms.

"**Vessel**" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

"**Commercial boat yard**" means any facility which engages for hire in the construction, storage, maintenance, repair, or refurbishing of vessels or any licensed independent marine maintenance contractor who engages in such activities.

"**Organotin**" means any compound of tin used as a biocide in an anti-fouling paint.

"**Retail**" means the transfer of title to tangible personal property other than for resale, after manufacturing or processing.

19.2 Except as otherwise provided in this Section, no person shall distribute, possess, sell, or offer for sale, apply or offer for use or application any marine anti-fouling paint containing organotin.

19.3 No person may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substances to paint to create an anti-fouling paint.

19.4 A person may distribute or sell a marine anti-fouling paint containing organotin with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may possess and apply or purchase for application an anti-fouling paint containing organotin with an acceptable release rate, however, ~~such~~ the paint may be applied only within a commercial boat yard and only to vessels which exceed twenty-five meters (82.02 feet) in length or which have aluminum hulls.

19.5 A person may distribute, sell, or apply a marine anti-fouling paint containing organotin having an acceptable release rate, if the paint is distributed or sold in a spray can in a quantity of sixteen ounces avoirdupois or less and is commonly referred to as outboard or lower unit paint.

20.0 Restricted Use Pesticide Dealer Permits

20.1 For the purposes of these regulations the following definitions shall apply:

20.1.1 The term "restricted use pesticide dealer" means any person who makes available for use any restricted use pesticide, or who offers to make available for use any such pesticide. The term excludes any person who sells or distributes pesticides only as an integral part of his pesticide application service and when ~~such~~ the pesticides are dispensed only through equipment used during a pesticide application.

20.1.2 The term "make available for use" means to distribute, sell, ship, deliver for shipment, or receive, and (having so received) deliver, for use by any person. However, the term excludes transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail dealers, acting only in those capacities.

20.1.3 The term "dealership" means any site owned or operated by a restricted use pesticide dealer where any restricted use pesticide is made available for use, or where the dealer offers to make available for use any such pesticide.

20.2 Effective December 31, 1990, no person shall make available for use any restricted use pesticide unless that person has a valid Dealer Permit issued by the Department.

20.3 A separate Dealer Permit shall be required for each dealership owned or operated by the restricted use pesticide dealer.

20.4 Issuance of a Dealer Permit:

20.4.1 Application for a Dealer Permit shall be made in writing to the Department on a designated form obtained from the Department.

20.4.2 The Department shall issue a Dealer Permit to an applicant upon payment of a fee of \$25.00 for a calendar year or any part of a calendar year.

20.4.3 All permits shall remain in full force and effect until December 31st of each year whereupon they shall become invalid unless renewed, except that a permit for which a renewal application has been submitted to the Department by November 30th shall remain in full force and effect until such time as the Department gives written notice to the permit holder of renewal or denial.

20.5 A restricted use pesticide dealer is responsible for the acts of his employees in the solicitation and sale of all pesticides and all claims and recommendations for the use of pesticides.

20.6 A dealer permit is not transferable.

20.7 The Department, in addition to any penalties authorized by the LAW, may deny, suspend, or revoke the application or permit of a restricted use pesticide dealer if he has failed to comply with any provisions of the LAW or any rules and regulations promulgated thereunder.

21.0 Institutional and Maintenance Pesticide Use Restrictions

21.1 For the purposes of these regulations, the following definitions shall apply:

"**General use pesticide**" shall include all pesticides as defined by 3 **Del.C.** §1202(27) ~~Delaware Pesticide Law~~, with the following exceptions:

- Any Restricted Use Pesticides, as defined by 3 **Del.C.** §1202 (30);
- Any State Restricted Use Pesticide, as defined by 3 **Del.C.** §1202 (31);
- Any anti-microbial pesticide used for controlling bacteria, viruses, or other microorganisms.

"**School**" shall mean a completed structure utilized as a public or private school, grades kindergarten through post graduate.

"**Apartment building**" shall mean a building that contains four or more dwelling units that are rented primarily for nontransient, permanent dwelling purposes, with rental paid by intervals of one week or longer.

"**Nursing home**" shall have the same meaning assigned by 16 **Del.C.** §1101.

"**Hospital**" shall have the same meaning assigned by 16 **Del.C.** §1001(1).

"**Child day-care center**" shall mean a facility, other than a school as defined elsewhere herein, which provides care, education, protection, supervision and guidance on a regular basis for children. Services are provided for part of the 24 hour day, unattended by parent or guardian, and for compensation. Provided, nevertheless, that

“child day-care center” shall not include any such facility which is operated within a private home.

"Private home" shall mean a non-public residence such as a house, duplex, townhouse, apartment, or mobile home where the provider of child day-care services lives and has control over the furnishings and use of space. An individual unit in public housing and university housing complexes is considered a private home.

"Institutional and Maintenance applicator" means any person who:

- Owns, operates or maintains a school, apartment building, nursing home, hospital or child day-care center, or is an employee of a school, apartment building, nursing home, hospital, or child day-care center; and who
- Applies general use pesticides inside the school, apartment building, nursing home, hospital, or child day-care center.
- A general use pesticide applicator must be certified pursuant to Section 8.0 of these regulations, unless, such person possesses a valid certification in subcategory 7.7.1.5 Institutional and Maintenance Pest Control.

21.2 A person certified as a general maintenance applicator may not engage in the business of pest control outside the scope of the employment for which they have been certified, unless the person becomes certified as otherwise provided by the LAW.

21.3 An owner or manager of a building that is a school, apartment building, nursing home, hospital, or child day-care center may obtain general maintenance pest control services for the building from a person only by:

21.3.1 Contracting with a business licensed pursuant to 3 **Del.C.** §1206;

21.3.2 Having the services performed by a general maintenance applicator with a valid certification in 7.7.1.1 or 7.7.1.5 of these regulations.

21.4 Records of "general use pesticide" applications made in a school, apartment building, nursing home, hospital, or child day-care center shall be kept in accordance with Section 14.1.

22.0 Restrictions on the Use of Pesticides for the Control of Subterranean Termites

22.1 This section applies to commercial pesticide applications for the control of subterranean termites. It is directed primarily towards soil treatment and does not include other treatments applied as dusts, aerosols or fumigants, nor does it address application technology such as biological control agents or baits.

22.2 For the purpose of this section, the following definition shall apply:

22.2.1 "Termiticide" shall mean a pesticide registered pursuant to the LAW and which is intended for

preventing, destroying, repelling or mitigating termites.

22.2.2 "Continuous chemical barrier" shall mean the application of a termiticide such that the resultant soil residue meets or exceeds the soil residue requirements currently recommended by the Association of Structural Pest Control Regulatory Officials (ASPCRO) and as those requirements may be amended in the future. Soil residue sampling shall be conducted in conformity with the current ASPCRO soil sampling protocol and as it may be amended in the future.

22.3 Termiticides shall be used to establish a continuous chemical barrier in all applicable areas prescribed by the label. However, where the termiticide is applied such that a continuous barrier is not achieved, or where the termiticide is not applied to all applicable areas prescribed by the termiticide label, the conditions outlined in both 22.3.1 and 22.3.2 below must be satisfied:

22.3.1 One or more of the following situations is present:

22.3.1.1 Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;

22.3.1.2 Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;

22.3.1.3 Specific customer request, or the recommendation of the certified applicator.

22.3.2 Within fourteen (14) days following the termiticide application, the following information shall be furnished in writing to the customer or to the customer's agent:

22.3.2.1 A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

22.3.2.2 The pesticide used, including brand name and EPA registration number;

22.3.2.3 The actual volume of the termiticide applied;

22.3.2.4 Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, known well heads, and sites of visible termite activity;

22.3.2.5 A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

22.3.3 This information shall be furnished to the customer or customer's agent on a form approved by the Department. The applicator shall for a period of two years from the date of application, keep and maintain all

completed copies of disclosure documents. ~~Such~~ These records shall be made available to authorized employees of the Department upon request.

22.4 Any application of termiticides, pursuant to this section, must be conducted with a commercial applicator at the site of application. This commercial applicator must be certified in category 7.7.1.2, Wood Destroying Pest Control.

22.5 The disclosure information and written notification specified in paragraph 22.3.2 are not required of termiticide treatments to utility poles, fence posts or tree stumps.

22.6 Any pre-construction termiticide application shall be applied in accordance with the termiticide product labeling and the U.S. Environmental Protection Agency, Pesticide Regulations (PR) Notice 96-7. For pre-construction treatments, PR Notice 96-7 supercedes this Section, and no pre-construction treatment shall be applied at a lower dosage and/or concentration than specified on the label, for applications prior to installation of the finished grade.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(e) (14 Del.C. §122(e))
14 DE Admin. Code 106

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

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

A. Type of Regulatory Action Required

New Regulations

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to adopt regulations 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II), 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) and 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The development of these regulations by the Department of Education was mandated in 14 Del.C. §1270(b).

These regulations shall be effective July 1, 2005 for all

teachers, specialists and administrators. However, for the teachers, specialists and administrators in those districts that are participating in the pilot of this process the effective date shall be July 1, 2004.

These regulations will replace the three existing regulations for DPAS I, 110 Teachers and Specialists Appraisal Process, 112 Addendum to Teachers and Specialists Appraisal Process and 115 School Level Administrator Appraisal Process on July 1, 2005. The new regulations 106, 107 and 108 have the added component of student achievement as one of the evaluation elements and 108 Administrator Appraisal Process Delaware Performance Appraisal System includes all administrators not just building level administrators.

C. Impact Criteria

1. Will the regulations help improve student achievement as measured against state achievement standards? The regulations are concerned with improving teacher, specialist and administrator quality which relates to student improvement. This is the last piece of the accountability system.

2. Will the regulations help ensure that all students receive an equitable education? The regulations address a staff appraisal process, not equity issues for students.

3. Will the regulations help to ensure that all students' health and safety are adequately protected? The regulations address a staff appraisal process, not students' health and safety.

4. Will the regulation help to ensure that all students' legal rights are respected? The regulations address a staff appraisal process, not students' legal rights.

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulations will require new training and different procedures for the evaluation of staff in Delaware schools.

7. Will the 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 will remain in the same entity.

8. Will the 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 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 regulations? The **Delaware Code** requires that the Department of Education promulgate regulations for a performance appraisal system for teachers, specialists and administrators.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost for these new regulations should not be more than the existing appraisal system.

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 Teacher Appraisal Process shall be effective July 1, 2005 for all teachers; however, for teachers in those districts which are participating in the pilot of this process the effective date shall be July 1, 2004.

1.1 For teachers participating in the pilot, any rating received on a Summative Evaluation shall not be included in the determination of a pattern of ineffective teaching as defined below.

2.0 Definitions

“Announced Observation” shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and formative conferences/reports.

“Board” shall mean a local board of education or charter school board of directors.

“Improvement Plan” shall be the plan that a teacher and evaluator mutually develop in accordance with section 7.0.

“Non-tenured teacher” is a professional employee who has not met the requirements of tenure and holds a valid and current license and certificate.

“Pattern of Effective Teaching” is defined in section 6.3.1.

“Pattern of Ineffective Teaching” is defined in 6.3.2.

“Satisfactory Component Rating” shall mean the teacher understands the concepts of the component and the teacher’s performance in that component is acceptable.

“Satisfactory Evaluation” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

“Summative Evaluation” shall be the rating process at the conclusion of the appraisal cycle.

“Technical Assistance Document” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

“Tenured Teacher” is a professional employee who has

completed three (3) years of service in the State, two (2) years of which shall have been in the employ of the same board and holds a valid and current license and certificate.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged and formative conferences/reports.

“Unsatisfactory Component Rating” shall mean that the teacher does not understand the concepts of the component and the teacher’s performance in that component is not acceptable.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

3.0 Appraisal Cycles

3.1 Tenured teachers who have earned a rating of “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. The minimum annual evaluation for a tenured teacher who has earned an effective rating, may be waived for the subsequent year but not for two (2) consecutive years. During the first year of implementation, half of the tenured teachers in a building with a rating of “Effective” on the most recent Summative Evaluation may have the annual Summative Evaluation waived.

3.2 Tenured teachers who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These teachers shall have an Improvement Plan which may require additional observations and/or other types of monitoring as outlined in the Technical Assistance Document.

3.3 Non-tenured teachers shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Non-tenured teachers who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations and/or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system.

4.2 The Document shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5)

PROPOSED REGULATIONS

components of criteria listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Appeal Form.

4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plans, and appeals.

5.0 Appraisal Criteria

5.1 The following five (5) components of criteria as outlined in the Technical Assistance Document shall be the basis upon which the performance of a teacher shall be evaluated:

- 5.1.1 Planning and Preparation
- 5.1.2 Classroom Environment
- 5.1.3 Instruction
- 5.1.4 Professional Responsibilities
- 5.1.5 Student Improvement

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.0 Appraisal Ratings and Teaching Patterns

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components in 5.1 above.

6.2 The Summative Evaluation shall also include one of three overall ratings: Effective, Needs Improvement, or Ineffective.

6.2.1 Effective shall mean that the teacher has received Satisfactory Component ratings in all five (5) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the teacher has received no more than two (2) Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.3 Ineffective shall mean that the teacher has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria or if the overall rating is "Needs Improvement" for the third consecutive year.

6.3 A pattern of teaching shall include one of the following:

6.3.1 A pattern of effective teaching shall be defined by the following chart representing the three (3) most recent appraisal cycles.

<u>Effective</u>	<u>Effective</u>	<u>Effective</u>
<u>Effective</u>	<u>Effective</u>	<u>Needs Improvement</u>

<u>Effective</u>	<u>Effective</u>	<u>Ineffective</u>
<u>Effective</u>	<u>Needs Improvement</u>	<u>Effective</u>
<u>Effective</u>	<u>Ineffective</u>	<u>Effective</u>
<u>Effective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
<u>Effective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Effective</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Effective</u>
<u>Needs Improvement</u>	<u>Effective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Effective</u>	<u>Effective</u>
<u>Needs Improvement</u>	<u>Effective</u>	<u>Ineffective</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Effective</u>
<u>Ineffective</u>	<u>Ineffective</u>	<u>Effective</u>
<u>Ineffective</u>	<u>Effective</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Effective</u>	<u>Effective</u>
<u>Ineffective</u>	<u>Effective</u>	<u>Needs Improvement</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Effective</u>

6.3.2 A pattern of ineffective teaching shall be defined by the following chart representing the three (3) most recent appraisal cycles.

<u>Effective</u>	<u>Ineffective</u>	<u>Ineffective</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Ineffective</u>	<u>Ineffective</u>

<u>Ineffective</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>

7.0 Improvement Plan

7.1 Improvement Plans shall be developed for teachers who receive an overall rating of Needs Improvement or Ineffective on the Summative Evaluation and/or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

7.2 The Improvement Plan shall contain the following:

7.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

7.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

7.2.3 Specific professional development or activities to accomplish the goals;

7.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with mentor(s), curriculum specialist(s), lead teacher(s) or veteran teacher(s);

7.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

7.2.6 Timeline for the plan, including intermediate check points to determine progress;

7.2.7 Procedures for determining satisfactory improvement.

7.3 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 7.2 above.

7.4 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.

7.5 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

8.0 Evaluator Credentials

8.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which shall be renewed every five (5) years.

8.2 The training for the certificate of completion shall consist of observation and conferencing techniques, frameworks for teaching training and a thorough review of the Technical Assistance Document.

8.3 The credentialing process shall be conducted by the Department of Education.

9.0 Appeal Process

9.1 A teacher may appeal any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All appeals together with the record shall be forwarded to the supervisor of the evaluator.

9.1.1 Within ten (10) working days of receiving the written appeal, the supervisor of the evaluator shall review the record which consists of the Pre-observation Form(s), the Formative Feedback Form(s), the Summative Evaluation and the written appeal, and issue a written decision.

9.1.2 If the appeal is denied, the decision shall state the reasons for denial.

9.1.3 The decision of the supervisor of the evaluator shall be final.

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 Specialist Appraisal Process shall be effective July 1, 2005 for all specialists; however, for specialists in those districts which are participating in the pilot of this process the effective date shall be July 1, 2004.

1.1 For specialists participating in the pilot, any rating received on a Summative Evaluation shall not be included in the determination of a pattern of ineffective practice as defined below.

1.2 Specialist shall mean a licensed and certificated staff person who is part of the school team and delivers professional services to students, teachers, staff and/or families. Specialists include but are not limited to guidance counselors, instructional support specialists, library media specialists, school psychologists, school nurses, student support specialists, and therapeutic services specialists.

2.0 Definitions

"Announced Observation" shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and formative conferences/reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length to gather appropriate data but less than twenty (20) minutes.

"Board" shall mean a local board of education or a charter school board of directors.

“Improvement Plan” shall be the plan that a specialist and evaluator mutually develop in accordance with section 7.0.

“Non-tenured specialist” is a professional employee who has not met the requirements of tenure and holds a valid and current license and certificate.

“Pattern of Effective Practice” is defined in 6.3.1.

“Pattern of Ineffective Practice” is defined in 6.3.2.

“Satisfactory Component Rating” shall mean the specialist understands the concepts of the component and the specialist’s performance in that component is acceptable.

“Satisfactory Evaluation” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

“Summative Evaluation” shall be the rating process at the conclusion of the appraisal cycle.

“Technical Assistance Document” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

“Tenured Specialist” is a professional employee who has completed three (3) years of service in the State, two (2) years of which shall have been in the employ of the same board and holds a valid and current license and certificate.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged and formative conferences/reports. The unannounced observation for the specialist may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

“Unsatisfactory Component Rating” shall mean that the specialist does not understand the concepts of the component and the specialist’s performance in that component is not acceptable.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

3.0 Appraisal Cycles

3.1 Tenured specialists who have earned a rating of “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation for a tenured specialist who has earned an effective rating may be waived for the subsequent year but not for two (2) consecutive years. During the first year of implementation, half of the tenured specialists in a building with a rating of “Effective” on the most recent Summative Evaluation may have the annual evaluation waived.

3.2 Tenured specialists who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced

Observation with a Summative Evaluation at the end of the one year period. These specialists shall have an Improvement Plan which may require additional observations and/or other types of monitoring as outlined in the Technical Assistance Document.

3.3 Non-tenured specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Non-tenured specialists who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations and/or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system.

4.2 The Document shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components of criteria listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Appeal Form.

4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plans, and appeals.

5.0 Appraisal Criteria

5.1 The following five (5) components of criteria as outlined in the Technical Assistance Document shall be the basis upon which the performance of a specialist shall be evaluated:

5.1.1 Planning and Preparation

5.1.2 Professional Practice and Delivery of Service

5.1.3 Professional Collaboration and Consultation

5.1.4 Professional Responsibilities

5.1.5 Student Improvement

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.0 Appraisal Ratings and Practice Patterns

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components in 5.1 above.

6.2 The Summative Evaluation shall also include one of three overall ratings: Effective, Needs Improvement or Ineffective.

6.2.1 Effective shall mean that the specialist has received Satisfactory Component ratings in all five (5) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the specialist has received no more than two (2) Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.3 Ineffective shall mean that the specialist has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria or if the overall rating is "Needs Improvement" for the third consecutive year.

6.3 A pattern of practice shall include one of the following:

6.3.1 A pattern of effective practice shall be defined by the following chart representing the three (3) most recent appraisal cycles.

Effective	Effective	Effective
Effective	Effective	Needs Improvement
Effective	Effective	Ineffective
Effective	Needs Improvement	Effective
Effective	Ineffective	Effective
Effective	Needs Improvement	Needs Improvement
Effective	Needs Improvement	Ineffective
Effective	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Effective
Needs Improvement	Effective	Needs Improvement
Needs Improvement	Effective	Effective
Needs Improvement	Effective	Ineffective
Needs Improvement	Ineffective	Effective

Ineffective	Ineffective	Effective
Ineffective	Effective	Ineffective
Ineffective	Effective	Effective
Ineffective	Effective	Needs Improvement
Ineffective	Needs Improvement	Effective

6.3.2 A pattern of ineffective practice shall be defined by the following chart representing the three (3) most recent appraisal cycles.

Effective	Ineffective	Ineffective
Needs Improvement	Needs Improvement	Ineffective
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Ineffective	Ineffective
Ineffective	Ineffective	Ineffective
Ineffective	Ineffective	Needs Improvement
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement

7.0 Improvement Plan

7.1 Improvement Plans shall be developed for specialists who receive an overall rating of Needs Improvement or Ineffective on the Summative Evaluation and/or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

7.2 The Improvement Plan shall contain the following:

7.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

7.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

7.2.3 Specific professional development or activities to accomplish the goals;

7.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with mentor(s), curriculum specialist(s), lead specialist(s) or veteran specialist(s);

7.2.5 Procedures and evidence that must be

collected to determine that the goals of the plan were met;

7.2.6 Timeline for the plan, including intermediate check points to determine progress;

7.2.7 Procedures for determining satisfactory improvement.

7.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 7.2 above.

7.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.

7.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

8.0 Evaluator Credentials

8.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which shall be renewed every five (5) years..

8.2 The training for the certificate of completion shall consist of observation and conferencing techniques, frameworks for practice training and a thorough review of the Technical Assistance Document.

8.3 The credentialing process shall be conducted by the Department of Education.

9.0 Appeal Process

9.1 A specialist may appeal any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the specialist receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All appeals together with the record shall be forwarded to the supervisor of the evaluator.

9.1.1 Within ten (10) working days of receiving the written appeal, the supervisor of the evaluator shall review the record which consists of the Pre-evaluation Form(s) the Formative Feedback Form(s), the Summative Evaluation and the written appeal, and issue a written decision.

9.1.2 If the appeal is denied, the decision shall state the reasons for denial.

9.1.3 The decision of the supervisor of the evaluator shall be final.

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 Administrator Appraisal Process shall be effective July

1, 2005 for all administrators; however, for administrators in those districts which are participating in the pilot of this process the effective date shall be July 1, 2004.

1.1 For administrators participating in the pilot, any rating received on a Summative Evaluation shall not be included in the determination of a pattern of ineffective administration as defined below.

1.2 For purposes of this regulation, an administrator is a professional employee of a board in a supervisory capacity involving the oversight of an instructional program(s).

2.0 Definitions:

“Announced Observation” shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences/reports.

“Board” shall mean the local board of education or charter school board.

“Experienced Administrator” shall mean an administrator who has three (3) or more years of service in a given role.

“Improvement Plan” shall be the plan that an administrator and evaluator mutually develop in accordance with section 7.0.

“Inexperienced Administrator” shall mean an administrator who has less than three (3) years of service in a given role.

“Pattern of Effective Administration” is defined in section 6.3.1.

“Pattern of Ineffective Administration” is defined in 6.3.2.

“Satisfactory Component Rating” shall mean the administrator’s performance in that component is acceptable and the administrator understands the concepts of the component.

“Satisfactory Evaluation” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

“Summative Evaluation” shall be the rating component at the conclusion of the appraisal cycle.

“Technical Assistance Document” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

“Unsatisfactory Component Rating” shall mean that the administrator’s performance in that component is not acceptable and the administrator does not understand the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

3.0 Appraisal Cycles

3.1 Experienced administrators who have earned a

rating of “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation may be waived for the subsequent year but not for two (2) consecutive years. During the first year of implementation, half of the experienced administrators in a building with a rating of “Effective” on the most recent Summative Evaluation may have the annual Summative Evaluation waived.

3.2 Experienced administrators who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of two (2) Announced Observations with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require additional observation(s) and/or other types of monitoring as outlined in the Technical Assistance Document.

3.3 Inexperienced administrators shall receive a minimum of two (2) Announced Observations with a Summative Evaluation at the end of the one year period. Inexperienced administrators who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observation(s) and/or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system.

4.1.1 The Document shall contain at a minimum the following:

4.1.1.1 Specific details about each of the four (4) components of criteria listed in 5.1.

4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Summative Evaluation, Improvement Plan and Appeal Form.

4.1.1.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plans, and appeals.

5.0 Appraisal Criteria

5.1 The following four (4) components of criteria as outlined in the Technical Assistance Document shall be the basis upon which the performance of an administrator shall be evaluated:

5.1.1 Assessment of Leader Standards

5.1.2 Assessment on Goals and Priorities

5.1.3 Assessment on the School or District Improvement Plan

5.1.4 Assessment on Measures of Student Improvement

5.2 Each of the four (4) components shall be equally weighted and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.0 Appraisal Ratings and Administration Patterns

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the four (4) components in 5.1 above.

6.2 The Summative Evaluation shall also include one of three overall ratings: Effective, Needs Improvement or Ineffective.

6.2.1 Effective shall mean that the administrator has received Satisfactory Component ratings in all four (4) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the administrator has received one (1) Unsatisfactory Component rating out of the four (4) components of the appraisal criteria.

6.2.3 Ineffective shall mean that the administrator has received two (2) or more Unsatisfactory Component ratings out of the four (4) components of the appraisal criteria or if the overall rating is “Needs Improvement” for the third consecutive year.

6.3 A pattern of administrative performance shall include one of the following:

6.3.1 A pattern of effective administration shall be defined by the following chart representing the three (3) most recent appraisal cycles.

<u>Effective</u>	<u>Effective</u>	<u>Effective</u>
<u>Effective</u>	<u>Effective</u>	<u>Needs Improvement</u>
<u>Effective</u>	<u>Effective</u>	<u>Ineffective</u>
<u>Effective</u>	<u>Needs Improvement</u>	<u>Effective</u>
<u>Effective</u>	<u>Ineffective</u>	<u>Effective</u>
<u>Effective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
<u>Effective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Effective</u>	<u>Ineffective</u>	<u>Needs Improvement</u>

PROPOSED REGULATIONS

<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Effective</u>
<u>Needs Improvement</u>	<u>Effective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Effective</u>	<u>Effective</u>
<u>Needs Improvement</u>	<u>Effective</u>	<u>Ineffective</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Effective</u>
<u>Ineffective</u>	<u>Ineffective</u>	<u>Effective</u>
<u>Ineffective</u>	<u>Effective</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Effective</u>	<u>Effective</u>
<u>Ineffective</u>	<u>Effective</u>	<u>Needs Improvement</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Effective</u>

6.3.2 A pattern of ineffective administration shall be defined by the following chart representing the three (3) most recent appraisal cycles.

<u>Effective</u>	<u>Ineffective</u>	<u>Ineffective</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Ineffective</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>

7.0 Improvement Plan

7.1 Improvement Plans shall be developed for administrators who receive an overall rating of Needs Improvement or Ineffective on the Summative Evaluation and/or a rating of Unsatisfactory (Unsatisfactory Component

Rating) on any component on the Summative Evaluation regardless of the overall rating.

7.2 The Improvement Plan shall contain the following:

7.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

7.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

7.2.3 Specific professional development or activities to accomplish the goals;

7.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with mentor(s), curriculum specialist(s) or other administrator(s), lead administrator(s) or veteran administrator(s);

7.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

7.2.6 Timeline for the plan, including intermediate check points to determine progress;

7.2.7 Procedures for determining satisfactory improvement.

7.3 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 7.2 above.

7.4 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.

7.5 Upon completion of the Improvement Plan, the administrator and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

8.0 Evaluator Credentials

8.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which shall be renewed every five (5) years by attending additional training.

8.2 The training for the certificate of completion shall consist of observation and conferencing techniques, review of ISLLC standards, and a thorough review of the Technical Assistance Document.

8.3 The credentialing process shall be conducted by the Department of Education.

9.0 Appeal Process

9.1 An administrator may appeal any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All appeals together with the

record shall be forwarded to the supervisor of the evaluator.

9.1.1 Within ten (10) working days of receiving the written appeal, the supervisor of the evaluator shall review the record which consists of information from the Announced Observation, the Summative Evaluation and the written appeal, and issue a written decision.

9.1.2 If the appeal is denied, the decision shall state the reasons for denial.

9.1.3 The decision of the supervisor of the evaluator shall be final.

EDUCATION IMPACT ANALYSIS

PURSUANT TO 14 DEL.C. SECTION 122(D)

1025 Delaware Interscholastic Athletic Association (DIAA)

1049 DIAA Definitions

1050 DIAA Sportsmanship

1051 DIAA Senior High School Interscholastic Athletics

1052 DIAA Junior High/Middle School Interscholastic Athletics

1053 DIAA Waiver Procedure

1054 DIAA Investigative Procedure

1055 DIAA Appeal Procedure

1056 Recognition of Officials' Associations

A. Type of Regulatory Action Required

Amendment to Existing Regulation

Repeal and Replace Regulations

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 1050 DIAA Sportsmanship by changing the number of the regulation to 1007 in order to conform with other number changes for the DIAA regulations. Section 2.4.1 Appeals, is also amended in order to align it with the other changes in the DIAA regulations.

The Secretary of Education also seeks the consent of the State Board of Education to repeal and replace the other eight (8) DIAA regulations.

Regulation 1025 will be renumbered as 1006 and retain the same name, Delaware Interscholastic Athletic Association (DIAA). Regulation 1006 now includes the content of three previous regulations 1053 DIAA Waiver Procedure, 1054 DIAA Investigative Procedure and 1055 DIAA Appeal Procedure. In addition, regulation 1006 includes sections on: the organization's name and purpose; on membership; the Board of Directors; the Executive Director; responsibilities of the member schools; the reporting of violations and protests and complaints to DIAA and additional penalties and fines. The sections on the

reporting of violations and protests and complaints to DIAA and additional penalties and fines were formally in the old regulations 1051 and 1052. Regulation 1006 has also been revised to reflect the changes in the Delaware Interscholastic Athletic Association processes and procedures as found in the reorganization of DIAA through 14 Del.C. Ch.3.

Regulations 1051 DIAA Senior High School Interscholastic Athletics and 1052 DIAA Junior High/Middle School Interscholastic Athletics have been renumbered as 1008 DIAA Junior High/Middle School Interscholastic Athletics and 1009 DIAA Senior High School Interscholastic Athletics. Both 1008 and 1009 now include the content of two previous regulations 1049 DIAA Definitions and 1056 Recognition of Officials' Associations. Both 1008 and 1009 have been totally realigned. Instead of 36 and 38 sections respectively the regulations have ten (10) sections which are parallel in design. These regulations have also been revised to reflect the changes in the Delaware Interscholastic Athletic Association as found in the reorganization of DIAA through 14 Del.C. Ch.3.

In addition to the realignment of regulations 1008 and 1009 they contain the following changes:

- The term "Relative Caregiver" was added in all references to parents and guardians in order to include that type of student/adult relationship.
- Under 2.2 Eligibility, Residence, "with the exception of boarding school students" was added to 2.2.1.
- The status of students who are homeless was added in 2.2.1.6 and 2.4.2.6 in regulation 1008 and in 2.2.1.8 and 2.4.2.6 in regulation 1009.
- In 2.5.1.5, under 2.5 Eligibility, Amateur Status, the permissible cash value of a gift was increased from \$50.00 to \$150.00.
- In 2.7.1.2 and 2.7.1.2.1 the definition of the term "Hardship has been clarified as well as conditions for seeking a waiver under the hardship rule. Also, 2.7.2.1 was added in regulation 1009 only to clarify the eligibility status of eighth grade students who are in eighth grade for a second time.
- Under 2.8, in 1009 only, the term "international students" was substituted for "foreign students" when referring to students who are not part of a foreign exchange program and these "international students" will now be treated as transfer students under DIAA regulations.
- Under 4.2 Practice Sessions, in 4.2.1 the minimum number of practice days has been changed from "(3) three weeks" to "21 calendar days". In 4.2.3 the sentence "However, there shall be one day of no activity (practice, scrimmage or contests) during any seven day period" was added at the end.
- Under 5.4 All-Star Contests in 5.4.5 (regulation

1009 only), the financial report now has to be filed in ninety (90) days not Thirty (30) days and the fine for not filing on time has been raised from \$50.00 to \$300.00.

- Under 7.5 Coaching Out of Season, in 7.5.1 (regulation 1009 only), the status of eighth and ninth grade students has been clarified. In 7.5.2.4 the words “as well as to members of the student body” was added at the end of the sentence (in both regulations 1008 and 1009).
- Under 9.1 Award in 9.1.1 “not more than \$150.00” was added after the word “symbolic” to place a cap on the value of awards. In 9.1.4 the retail aggregate value of the awards was increased from \$100.00 to \$150.00.
- The reference to boxing was removed from both regulations.

C. Impact Criteria

1. Will the regulations help improve student achievement as measured against state achievement standards? The amended and replaced regulations are for the Delaware Interscholastic Athletic Program which compliments the academic program.

2. Will the regulations help ensure that all students receive an equitable education? The amended and replaced regulations are for the Delaware Interscholastic Athletic Program which is available to all students.

3. Will the regulations help to ensure that all students' health and safety are adequately protected? The amended and replaced regulations for the Delaware Interscholastic Athletic Program are designed to ensure that all students' health and safety are adequately protected

4. Will the regulations help to ensure that all students' legal rights are respected? The amended and replaced regulations for the Delaware Interscholastic Athletic Program are designed to respect students' legal rights.

5. Will the regulations preserve the necessary authority and flexibility of decision making at the local board and school level? The amended and replaced regulations for the Delaware Interscholastic Athletic Program will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended and replaced regulations for the Delaware Interscholastic Athletic Program will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the 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 replaced regulations for the Delaware Interscholastic Athletic Program 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 regulations? The statute, 14 Del.C. Ch.3, requires the Department of Education and the DIAA Board of Directors to promulgate regulations for the interscholastic athletics program.

10. What is the cost to the State and to the local school boards of compliance with the regulation? These regulations do not alter the existing costs.

*** PLEASE NOTE: DUE TO THE LENGTH OF THE EXISTING REGULATIONS THAT ARE BEING RENUMBERED THEY ARE NOT BEING REPRODUCED HERE. THE EXISTING REGULATIONS MAY BE VIEWED AT WWW.STATE.DE.US/RESEARCH/ADMINCODE/EDUCATION/FRAME.HTM**

~~1050~~ 1007 DIAA Sportsmanship

1.0 Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach

which indicate to the team and/or to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.

1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

1.5.1 The School Administrator and Athletic Director shall:

1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.

1.5.1.2 Review the Sportsmanship Rule with all athletic staff.

1.5.1.3 Insist upon strict compliance with all DIAA rules and regulations.

1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

1.5.1.7 Provide sanitary and attractive facilities for the dressing and housing of visiting teams and officials.

1.5.2 The Coach shall:

1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.

1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well-being of the individual players and that the most important values of competition are derived from playing the game fairly.

1.5.2.3 Be a modest winner and a gracious loser.

1.5.2.4 Maintain self-control at all times and accept adverse decisions without public display of emotion

or dissatisfaction with the officials. Register disagreement through proper channels.

1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.

1.5.2.6 Pay close attention to the physical well-being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.

1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.

1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.

1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.

1.5.2.10 Properly supervise the athletes under his/her immediate care.

1.5.3 The Participant (athletes and cheerleaders) shall:

1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of your school and community.

1.5.3.2 Be courteous to the visiting team. Your opponents wish to excel as much as you do. Respect their efforts.

1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.

1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.

1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.

1.5.3.6 Respect the integrity and judgement of the officials and accept their decisions without complaint.

1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.

1.5.4 The Official shall:

1.5.4.1 Know the rules and interpretations and be thoroughly trained to administer them.

1.5.4.2 Maintain self-control in all situations.

1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches.

1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.

1.5.4.5 Refrain from commenting upon or discussing a team, player, or game situation with those not immediately concerned.

1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship.

1.5.5 The Spectator shall:

1.5.5.1 Realize that he/she represents the school just as definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman and to encourage through his/her behavior the practice of good sportsmanship by others.

1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:

1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, and/or derogatory remarks.

1.5.5.2.2 Throwing objects.

1.5.5.2.3 Going onto the playing surface and interrupting a contest.

1.5.5.2.4 Use of alcohol or other controlled substances.

1.5.5.3 Respect the judgement and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.

1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

1.5.5.5 Be modest in victory and gracious in defeat.

2.0 Processing Violations

2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.

2.1.3 The Executive Director shall transmit a copy of the report to the principal of the school(s) involved.

2.1.4 Each principal concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide member schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and inform the school(s) involved of his/her disposition of the matter. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate

what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DIAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of member schools may be imposed by the Sportsmanship Committee.

2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

2.2 Policies

2.2.1 The basis for the following policy statement is that a member school shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.1.1 Reprimanding its administrator or athletic director and providing written documentation to the Executive Director, or

2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.1.3 Having the entire school disciplined by DIAA.

2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The athlete, depending on the seriousness of the act, may be declared ineligible by the principal, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 school days.

2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking punitive action against the offender or accepting discipline from DIAA.

2.2.1.4 Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DIAA.

2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or

2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.5.3 Having the entire school disciplined by DIAA.

2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:

2.2.1.6.1 He/she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or

2.2.1.6.2 He/she argues with the official or indicates with gestures or other physical actions his/her dislike for a decision, or

2.2.1.6.3 He/she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or

2.2.1.6.4 He/she makes disparaging or unprofessional remarks about another school's personnel.

2.2.1.7 All actions by a member school resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director and/or the Sportsmanship Committee.

2.3 Penalties

2.3.1 Game Ejection

2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconduct shall be suspended from the next complete (a winner is determined or a tie is declared) contest at that level of competition and all other complete or suspended contests in the interim at any level of competition in addition to any other penalties which DIAA or a conference may impose.

2.3.1.1.1 A player who leaves the team bench area and enters the playing field, court, or mat during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next complete contest at that level of competition and all other complete or suspended contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.

2.3.1.2 A disqualified player or coach may not be physically present at any contest in that sport during his/her suspension.

2.3.1.3 If a coach is disqualified from the final contest of the season, his/her suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility in that sport.

2.3.1.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the

appropriate length of time in their subsequent coaching assignment.

2.3.1.3.2 Seniors shall fulfill their penalty in the post-season all-star game in that sport. If not chosen to participate in the all-star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

See 3 DE Reg. 436 (9/1/99)

2.3.1.4 A player or coach ejected for a second time during the same season shall be subjected to a two-game suspension and meet, in a timely fashion, with the Sportsmanship Committee accompanied by his/her principal or designee and, in the case of an athlete, by his/her coach.

2.3.2 The following penalties represent degrees of discipline in enforcing the Sportsmanship Rule:

2.3.2.1 Reprimand - a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.

2.3.2.2 Probation - probation is a more severe penalty and may be imposed by the Executive Director or the Sportsmanship Committee on a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:

2.3.2.2.1 Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he/she/the school files with DIAA a plan indicating the measures that shall be taken to alleviate the problem which caused him/her/the school to be placed on probation, or

2.3.2.2.2 Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.

2.3.2.3 Suspension - a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DIAA sanctioned interscholastic competition.

2.4 Appeals

~~2.4.1 Decisions of the Executive Director or Sportsmanship Committee may be appealed to the DIAA Board of Directors in accordance with the procedure found in Regulation 1055 DIAA Appeal Procedure. However, Notice of Appeal shall be served by certified mail within ten (10) calendar days after receipt by the appellant written notice of the action of the Executive Director or~~

Sportsmanship Committee. Decisions of the Executive Director or Sportsmanship Committee may be appealed to the DIAA Board of Directors in accordance with the procedure found in 14 DE Admin. Code 1006.10. In accordance with subsection 1006.10.1.1.3.1, the notice of appeal shall be served by certified mail within ten (10) calendar days after the appellant's receipt of the written notice that official action has been taken by the Executive Director or Sportsmanship Committee.

1006 Delaware Interscholastic Athletic Association (DIAA)

1.0 Organization Name and Purpose: The organization shall be known as the Delaware Interscholastic Athletic Association (DIAA) and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's Rules and Regulations governing the conduct of interscholastic athletics.

2.0 Membership in DIAA

2.1 Full Member Schools: Any secondary school including private, public, vocational-technical, and charter schools, as authorized by 14 Del.C. Ch. 5, may become a full member school of DIAA by payment of dues and a signed affirmation of the obligations of membership.

2.1.1 A full member school is a non-voting member of DIAA and does not participate in its day-to-day governance. A full-member school may at any time make appropriate recommendations for policy action to the DIAA Board of Directors for its consideration.

2.2 Associate Member School: Any school, not a full member school, located within the boundaries of the state of Delaware and containing grades 6 thru 8, or 8 thru 12, or any grouping of such grade levels, may apply for status as an associate member school provided the applicant sets forth good cause and sufficient justification why such school cannot become a full member school. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.

2.2.1 The membership application shall contain a statement that the school will abide by the Rules and Regulations of the Department of Education and the Delaware Interscholastic Athletic Association and in those cases wherein the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate member school competes with a full member school of DIAA or a comparable state association; participates in DIAA

sanctioned tournaments/meets in cross country, indoor track, wrestling (except dual-team tournaments), outdoor track, and golf involving the aforementioned full member schools; or participates in a state championship event.

2.2.2 Such associate member schools, after initial approval, shall be reviewed each year by the DIAA Board of Directors for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

2.3 Membership Dues Schedule: Yearly dues for full member and associate member schools shall be as follows:

2.3.1 \$400 for middle schools.

2.3.2 \$600 for high schools with enrollments of 499 or less.

2.3.3 \$800 for high schools with enrollments of 999 or less.

2.3.4 \$1,000 for high schools with enrollments of 1,499 or less.

2.3.5 \$1,200 for high schools with enrollments of 1,999 or less.

2.3.6 \$1,400 for high schools with enrollments of 2,000 or more.

2.3.7 Membership dues shall be paid each year by August 1. Full member and associate member schools which fail to comply may be subject to penalties as determined by the DIAA Board of Directors.

2.4 Participation in State Championship Tournaments/Meets: Any member high school in good standing, is sponsoring a team in a given sport, and is in compliance with all applicable DIAA Rules and Regulations shall be eligible for the DIAA approved state championship tournament/meet in that sport.

2.5 Member schools shall comply with the regulations of the Delaware Interscholastic Association and acceptance of membership shall be construed as an agreement to that effect.

3.0 DIAA Board of Directors

3.1 Conflict of Interest: Any member of the Board of Directors who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse himself or herself from consideration of the matter and shall not vote on that appeal or waiver request. The Chairperson of the Board is responsible for maintaining the integrity of the decision making process.

3.2 Committees of the DIAA Board of Directors

3.2.1 DIAA Board standing committees include: Rules and Regulations, Officials, Sports Medicine; Sportsmanship and one for each DIAA recognized sport. The Chairperson of the DIAA Board may appoint additional short term committees with specific assignments when deemed necessary.

3.2.1.1 The committee for each DIAA

recognized sport shall have, in writing, procedures for determining tournament berths and selecting tournament sites. Such procedures shall be on file with the Executive Director and sent to the administrative head of each member school.

3.3 Committee Membership

3.3.1 The Chairperson of the DIAA Board of Directors and the Executive Director shall be ex-officio members of all committees. Committee membership shall be geographically representative and committee membership may include administrators, athletic directors, coaches, local school board members, officials and public members.

3.3.2 The Chairperson of the DIAA Board of Directors shall appoint individuals to serve as committee chairpersons. The individuals appointed shall serve for an indefinite period of time. The Chairperson of the Board, however, with the advice of the Executive Director, in his or her discretion, may remove a committee chairperson.

3.3.3 The Committee Chairperson, with the advice and consent of the Executive Director, shall appoint individuals to serve on the committee. The individuals so appointed shall serve for an indefinite period of time. The Committee Chairperson, however, with the advice and consent of the Executive Director, may, in his or her discretion, remove individuals from the committee.

4.0 Responsibilities of the Executive Director

4.1 Interpret the rules and regulations and grant waivers of rules and regulations: Any waiver granted shall be temporary and shall be subject to review and approval by the DIAA Board at a subsequent or special meeting. All decisions or actions as noted above shall be documented and shall be a part of any hearing or appeal procedure.

4.2 Decide issues between meetings of the Board of Directors. The Executive Director shall initiate a review of or fully investigate an alleged violation of the Rules and Regulations that he/she has seen, heard or read about, or which has been reported to him/her. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a player, team, coach or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.

4.3 Carry on the business of the DIAA Board and DIAA between meetings: Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board of Directors. No school or individual shall be penalized in any case in which the DIAA Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the day-to-day operation of the organization.

5.0 Responsibilities, Powers, and Duties of the

Administrative Head of School

5.1 Responsibilities of Administrative Head of School

5.1.1 The administrative head of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individuals and teams. The administrative head may delegate his or her authority, but such delegation will not negate the responsibility for a violation of the DIAA Regulations by his/her school.

5.2 Powers and Duties of Administrative Head of School

5.2.1 The administrative head of each member school shall exercise general control over all of the interscholastic athletic matters of his/her school which include but are not limited to the following:

5.2.1.1 Sanctioning all interscholastic athletic contests in which his/her school participates.

5.2.1.2 Excluding any contestant because of improper conduct.

5.2.1.3 Excluding any contestant whose physical health would be jeopardized by such participation, because of illness or injury suffered, until such time as the contestant is declared physically fit by the school or attending physician.

5.2.1.4 Protecting the well-being of all visitors and officials attending interscholastic athletic contests conducted by his/her school. Administrative heads of member schools shall be expected to provide adequate security and, in the absence of such provisions, penalties may be imposed.

5.2.1.4.1 When a contest is conducted at a neutral site, the administrative heads of the participating schools shall be held jointly responsible for the protection and well-being of all visitors and officials. In the absence of adequate security, penalties may be imposed upon either or both of the schools.

5.2.1.5 Protecting the well-being of the school's participants by providing them with safe and suitable uniforms and equipment.

5.2.1.6 Ensuring that all required contracts for athletic contests in which the school participates are in writing and bear the proper signatures.

5.2.1.7 Designating a staff member of the school as the faculty manager for the teams representing the school or to serve as the faculty manager.

5.2.1.8 Ensuring that an authorized representative accompanies the school's teams to all contests.

5.2.1.9 Certifying in writing the eligibility of his/her school's contestants in accordance with the Regulations of the Department of Education.

5.2.1.10 Exercising such other powers regarding the interscholastic athletic program of the school

as are consistent with the needs of the school and with the provisions and spirit of the Regulations of the Department of Education.

5.2.1.11 Urging all students competing on the school's teams to obtain medical accident insurance which covers athletic participation.

6.0 Amendments to Department of Education Regulations

6.1 The DIAA Board, The Secretary of Education, the Executive Director of DIAA or any member school may propose changes, additions or deletions to the Department of Education regulations.

6.1.1 Proposed changes shall be submitted in writing by a member school(s) to the Executive Director and these proposed changes and any other changes submitted by the Secretary of Education or the Executive Director of DIAA or the DIAA Board of Directors shall be reviewed by the Rules and Regulations Committee.

6.1.2 Any proposed changes to the Regulations along with comments received from the Rules and Regulations Committee, shall be considered at a scheduled meeting of the DIAA Board. Proposed changes adopted by the Board shall thereafter be submitted to the Secretary of Education who will place them on the State Board of Education agenda for review and final approval.

6.1.2.1 All member schools shall then be advised in writing of any proposed changes. The member schools and the public shall have an opportunity to review and comment on the proposed changes during the thirty day period that the regulations are advertised in the Register of Regulations (as per the Administrative Procedures Act).

7.0 Reporting Violations of Department of Education Regulations and Protests and Complaints to DIAA

7.1 Reporting violations of Department of Education regulations

7.1.1 If a school violates a provision of the Department of Education regulations the administrative head or his/her designee shall notify the Executive Director in writing of the violation. All violations shall be reviewed by the DIAA Board of Directors which may impose additional penalties.

7.1.1.1 Additional penalties may be imposed for repeat offences or as deemed necessary to assure proper conduct of interscholastic athletics.

7.2 Reporting Protests and Complaints

7.2.1 All protests and complaints brought before DIAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

8.0 DIAA Board of Directors Investigative Procedure

8.1 The following investigative procedure shall be followed when the DIAA office receives information

indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of DIAA.

8.1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.

8.1.2 Permission shall be obtained from the administrative head of the member school to interview students and/or staff members and each person interviewed shall be informed of the nature of the investigation.

8.1.3 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).

8.1.4 When immediate punitive action by the Executive Director is necessary, the action taken shall be stated in writing.

8.1.5 When charges are to be presented to the DIAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

9.0 Waiver of DIAA Rules and Regulation

9.1 General

9.1.1 The DIAA Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:

9.1.1.1 In the case of eligibility waiver requests, there exists a hard ship as defined by 9.2.1;

9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the Rule;

9.1.1.3 The spirit of the rule being waived will not be offended or compromised;

9.1.1.4 The principal of educational balance over athletics will not be offended or compromised; and

9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.

9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant (the student, his/her parents or guardians, principal, headmaster or other affected party) to show extenuating circumstances warranting waiver.

9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient data to make it possible to reach a decision without further investigation. It

is not the duty of the Executive Director or the DIAA Board to produce or collect information.

9.1.4 Waiver requests would be filed promptly when it becomes apparent to the student, principal, headmaster or other affected party, that a waiver will be required. In any event, all requests for a waiver of the rules, with all documentation complete, must be received by the Executive Director at least 21 calendar days before the next regularly scheduled meeting of the DIAA Board in order to be placed on the agenda for that meeting.

9.1.4.1 Notwithstanding this requirement, the Chairperson of the DIAA Board may at his/her discretion add a waiver request to an agenda in an emergency situation. Failure to file a waiver request in a timely manner when all information is available shall not be considered an emergency situation.

9.1.5 The applicant is entitled to a hearing on his/her waiver request. Waiver hearings shall be conducted in an informal manner that affords all parties the opportunity to present all information and all relevant arguments.

9.1.5.1 The DIAA Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

9.1.5.2 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

9.1.5.3 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

9.1.5.4 Any document introduced into evidence at the hearing shall be marked by the Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the Board members present for the hearing unless otherwise directed.

9.1.5.5 Any request by the DIAA Board for additional information pertaining to a waiver request shall be promptly supplied by the affected students, coaches, and member schools.

9.1.5.6 DIAA shall provide a stenographic reporter at a hearing at its own expense.

9.1.6 The DIAA Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, a decision made on a waiver request shall be effective immediately.

9.1.7 The DIAA Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

9.2 Eligibility Rule Waiver Request

9.2.1 Unless specifically defined in the eligibility rule in question, "hardship" means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the DIAA Board and in accordance with the following procedures:

9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student to the involved member school's principal, headmaster or their designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student or the administrator, or both, for granting the waiver.

9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principle or Headmaster indicating whether the school supports the waiver request.

9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The DIAA Board, however, may take into consideration the school's position on the waiver request when rendering its decision.

9.2.2.2 To aid the DIAA Board in making an informed decision, the waiver request shall include the student's:

9.2.2.2.1 Official transcripts from the sixth grade through the current school year and semester grades for the current school year;

9.2.2.2.2 Attendance records for the last two (2) years;

9.2.2.2.3 A letter from the Principal or Headmaster either supporting or not supporting the waiver request;

9.2.2.2.4 Medical records (if applicable);

9.2.2.2.5 Legal documentation (if applicable);

9.2.2.2.6 IEP's (if applicable); and

9.2.2.2.7 Any documentation/evidence to substantiate a hardship or extenuating circumstance exists.

9.2.3 An appearance by the student and their parent, guardian or Relative Caregiver before the DIAA

Board is mandatory on requests for an eligibility waiver. An appearance by a school representative is strongly encouraged.

9.3 Waiver Requests of Non-eligibility Rules

9.3.1 The Principal or Headmaster of a member school, or any other individual may request a waiver of a rule, regulation, guideline, policy or procedure of DIAA not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule.

9.3.2 All requests for non-eligibility waivers must be in writing, signed by the Principal or Headmaster.

9.3.3 An appearance by the Principal or Headmaster or his/her designee or other individual requesting the non-eligibility waiver is optional. If the Principal or Headmaster or his/her designee or other individual requesting the non-eligibility waiver choose to appear before the DIAA Board he/she must notify the Executive Director of his/her intent to do so at the time the request for waiver is filed. Otherwise, the principal or his/her designee, or other individual, may attend the meeting but may not be permitted to address the DIAA Board.

9.3.4 If the waiver requested would affect more than one member school, the waiver applicant shall provide the position of the other affected member schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

10.0 Appeal Procedure to the DIAA Board of Directors

10.1 Decisions of the Executive Director, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the DIAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics.

10.1.1 Initiation of an Appeal to the DIAA Board

10.1.1.1 Whenever a right of appeal of a decision to the DIAA Board of Directors is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in

no event shall a notice be filed more than thirty (30) calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or body.

10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten (10) calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 DE Admin. Code 1007.

10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the on the next meeting agenda of DIAA.

10.1.2 Record of Prior Proceedings

10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.

10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meetings(s) at which a disputed action was taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.

10.1.2.3 The record shall be filed with the Executive Director within ten (10) days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.

10.1.3 DIAA Board Hearing Procedures for Appeals

10.1.3.1 Record Review

10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the DIAA Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten (10) days after the notice was filed.

10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten (10) days before the consideration date, unless otherwise directed.

10.1.3.1.3 If the parties agree to submit

the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the DIAA Board's decision shall be based on the existing record, the written statements and oral argument, if any.

10.1.3.2 Evidentiary Hearings

10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the DIAA Board otherwise decides to receive additional evidence.

10.1.3.2.2 The Chairperson or his/her designated representative shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.

10.1.3.2.3 The DIAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.

10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.

10.1.3.2.6 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the DIAA Board.

10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the DIAA Board.

10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

10.1.3.2.9 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.

10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of

their affairs may be admitted into evidence.

10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the DIAA Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the DIAA Board members present for the hearing unless otherwise directed.

10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.

10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

11.0 Appeal to the State Board of Education: Any party to a controversy involving the athletic rules and regulations, including a waiver thereof, may appeal to the State Board of Education by setting forth such grievance in a petition. The petition or notice of appeal shall be served on the Secretary of Education no later than thirty (30) calendar days after receipt of the decision. In addition, a copy of the petition or notice of appeal shall be served on the Executive Director of DIAA by certified or registered mail. Any decision shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See 14 Del.C. §312 and the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education).

1008 DIAA Junior High/Middle School Interscholastic Athletics (Feb. 9, 2004)

1.0 National Federation of State High Schools, Conferences, Contracts and Equivalency Rules

1.1 National Federation of High school Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed of public and non-public schools. When established they must submit its proposed membership and its constitution and bylaws to the DIAA Board of Directors and must be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the conference must be

compatible with all provisions of the DIAA Regulations; interpretations and rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and non-member or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a \$15.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.4 Equivalent Rules

1.4.1 A full member school shall not participate

in a scrimmage or contest with an instate school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage is defined as: an informal competition between schools in which officials are not compensated, a score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DIAA unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with college students. This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

2.0 Eligibility: No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements.

2.1 Eligibility, Grades and Age

2.1.1 The junior high /middle school interscholastic program shall include grades 6-8, inclusive. No junior high/middle school student who has completed a season at the junior high/middle school level shall compete in the same sport at the senior high school level during the same school year. A junior high/middle school student who participates in a varsity or sub-varsity game at the high school level shall be ineligible to participate at the junior high/ middle school level in the same sport.

2.1.1.1 Eighth-grade students who become 15 years of age on or after June 15 in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

2.1.1.2 Permission shall be granted for 15-year old eighth-grade students in a school terminating in the

eighth grade who are ineligible for junior high/middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.2 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact sports.

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s) legal guardian(s) or Relative Caregiver in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligible. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 Del.C., Ch.4.

2.2.1.4 A student who is a non-resident of Delaware shall be eligible to attend a public school, charter school or career-technical school if, in accordance with 14 Del.C. §607, his/her custodial parent, legal guardian or Relative Caregiver is a full-time employee of that district.

2.2.1.5 Notwithstanding 2.2.1, a student shall be eligible at a public school, charter school or vocational-technical school if he/ she is enrolled in accordance with 14

Del.C. §202(f), the Caregivers School Authorization.

2.2.1.5.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.6 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the junior high/middle school which he/she represents in order to participate in a practice, scrimmage, or contest.

2.3.2 A student who is participating in the Delaware School Choice Program, as authorized by 14 Del.C. Ch.4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the choice district in order to legally enroll at his/her home school. Without a release, the student would not be legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.3 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.4 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.5 A Student who fails to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from his/her reentry to school.

2.3.6 An eligible student who practices in violation of 2.2.2 through 2.2.5 shall. When he/she regains her eligibility, be prohibited from practicing, scrimmaging or competing for an equivalent number of days.

2.4 Eligibility-Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper

school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.6.1).

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 2.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with 14 Del.C. §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of

the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to affecting interscholastic athletic participation.

2.4.3 Transfer Because of a Change in the Program of Study or Financial Hardship If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.3.1 Documentation for Change in Program of Study: Documentation for change in program of study (a multi-year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.3.1.1 The student's schedule;

2.4.3.1.2 The student's transcript;

2.4.3.1.3 Current course descriptions from both the sending and receiving schools;

2.4.3.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be

offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.3.1.5 A statement from the principals of both the sending and receiving school that the student is not transferring for athletic advantage (see 2.4.5).

2.4.3.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.3.2.1 Proof of extreme financial hardship caused by significant loss of income and/or increased expenses; and

2.4.3.2.2 A statement from the principal of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.5).

2.4.4 Transfer Because of a Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school-day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics, or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.6 A student who transfers from a public, private, career-technical school or charter school to a school of choice, as authorized by 14 Del.C. Ch.4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport only.

2.4.7 A student who transfers from a school of choice to either a private school, public school, career technical school or, after completing his/her two year commitment, to a public charter school, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year.

2.4.8 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other

eligibility requirements.

2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp/clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic. Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the

suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) courses. Two (2) of those courses must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.2.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.4 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.5 An ineligible student who practices in violation of 2.6.1, 2.6.2 or 2.6.3, shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than two

(2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 "Hardship" shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons.

2.7.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.2.2 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

2.7.2.3 Sixth-grade students shall not be permitted to participate in football unless the conference

develops a classification system that is approved by the DIAA Board of Directors.

2.7.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.

2.7.4 Participation shall be defined as taking part in a school sponsored practice, scrimmage, or contest on or after the first allowable date for practice in that sport.

2.8 Student Eligibility Report Forms

2.8.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.8.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

2.9 Use of an Eligible Athlete:

2.9.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es) and/or point(s) won.

2.9.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.9.2.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament. Team and/or individual awards shall be returned to the event sponsor and team and/or individual records and performances shall be nullified.

2.9.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings. A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

2.9.3 The deliberate or inadvertent use of an

ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as any affected placements will be adjusted according to the rules of that sport.

2.9.3.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.9.3.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.9.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties as stipulated in 2.9.1 and 2.9.2 shall be imposed.

2.9.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the number of days up to the length of the school year from the date the charge is substantiated.

2.9.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.9.7 If an athlete or his/her parent(s), legal guardian(s), or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.10 Determination of Student Eligibility and the Appeal Procedures

2.10.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the

student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.10.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.10.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in Regulation 1006 Section 10.1.3.

3.0 Physical Examinations, Weight control Programs for Wrestling and Required Medical Personnel in Attendance at All Football Games

3.1 Physical Examinations

3.1.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after May 1 and before beginning such athletic activity for the current school year.

3.1.2 A certificate to that effect, as well as the parent's, legal guardian's or Relative Caregiver's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

3.1.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the athlete has been treated for an injury during the preceding sports season, the athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset, an operation has been performed on the athlete during the preceding term, or the athlete has a remedial defect.

3.1.4 The medical history of the student should be available at the time of each examination.

3.1.5 A player who is properly certified to participate in interscholastic athletics but is physically unable to participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school or designee, a statement from a qualified physician that he/she is again physically able to participate.

3.2 Wrestling Weight Control Program

3.2.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. A wrestler may re-certify at a lower weight during the 4 weeks from the first day he/she appears at practice. However, once certified at a weight, a wrestler may not weigh-in more than one class above the weight of the

certification without automatically re-certifying at a higher weight. Once re-certified to a higher weight class the wrestler can no longer re-certify lower. After 4 weeks from the first practice day a wrestler may not compete in a weight class below his duly established weight class.

3.2.2 The weight classifications shall be as follows:

<u>76 lbs.</u>	<u>100 lbs.</u>	<u>124 lbs.</u>	<u>148 lbs.</u>
<u>82 lbs.</u>	<u>106 lbs.</u>	<u>130 lbs.</u>	<u>155 lbs.</u>
<u>88 lbs.</u>	<u>112 lbs.</u>	<u>136 lbs.</u>	<u>165 lbs.</u>
<u>94 lbs.</u>	<u>118 lbs.</u>	<u>142 lbs.</u>	<u>250 lbs.</u>
<u>(minimum weight 164 lbs.)</u>			

3.2.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

3.2.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director of DIAA. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.

3.2.5 Schools which desire to conduct their wrestling program at a time other than the specified season must request permission from the Executive Director.

3.2.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

3.3 Required Medical Personnel In Attendance at All Football Games

3.3.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. Failure by the host school to provide this service shall result in a \$100.00 fine.

4.0 Sports Seasons, Practice Sessions and Maximum Game Schedules and designated Sports Seasons

4.1 Sports Seasons

4.1.1 The fall sports season shall begin on August 25 and end not later than December 1. Practice for any fall sport shall not begin earlier than August 25.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays on "air", practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouth guards and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and

block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament. "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule

4.1.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December

4.1.3 The spring sports season shall begin on March 1 and end not later than the last school day. Practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which conducts practice prior to the first allowable date shall pay a \$100.00 fine per each illegal practice day and a school which participates in a game prior to the first allowable date shall be required to forfeit the contest and pay a \$100.00 fine.

4.1.5 No member school shall participate in a post season contest without the written approval of the Executive Director.

4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, chalkboard sessions, warmup

and cool down exercises, drills, and mandatory strength training, etc. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete. The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the individual schools and conferences. However, there shall be one day of no activity (practice, scrimmage or contests) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if an eighth grade student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two-hour practice limitation shall pay a \$100.00 fine.

4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

Team Limitations

Individual Limitations

<u>Sport</u>	<u>Season</u>	<u>Week</u>	<u>Week</u>	<u>Day</u>
Fall				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition dates	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates	2 competition dates	2 competition dates	
	of which one date may involve more than 2 teams			
Winter				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	* 12 contests	2 competition dates	2 competition dates	5 matches
Spring				
Baseball (boys)	12 contests	2 contests	2 contests	

Softball (girls)	12 contests	2 contests	2 contests	
Outdoor Track (boys and girls)	10 competition dates	+2 competition dates	+2 competition dates	
Tennis (boys and girls)	12 contests	2 contests	2 contests	2 halves
Outdoor Track (boys and girls)	10 competition dates +	2 competition dates	+ 2 competition dates	

+ A team may not participate in two different cross country or outdoor track meets on the same day.

*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

4.3.2 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three (3) contests/competition dates in a week.

4.3.3 A student shall participate in a particular sport for only one season during each academic year.

4.3.4 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

4.3.5 A school which exceeds the weekly contest limitation shall forfeit the contest and pay a \$100.00 fine.

4.3.6 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 2.10.

5.0 School/Team Competition, Sanctioning of Competitions and All Star Contests

5.1 School/Team Competition

5.1.1 Sponsoring Interscholastic Teams: Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Member of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition. Students are considered to be representing a school if the school does any of the following:

5.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

5.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

5.1.1.3 Permits the students to compete under the name of the school.

5.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

5.1.1.5 Presents or displays individual/ team awards.

5.1.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

5.1.2.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

5.1.2.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

5.1.2.3 The participating schools agree to comply with all applicable DIAA rules and regulations as stated in the current DIAA Official Handbook.

5.1.3 Levels of Participation

5.1.3.1 Level 1 or developmental sport - less than seven (7) participating schools. DIAA rules and regulations shall not be in effect.

5.1.3.2 Level 2 or recognized sport - seven (7) or more participating schools. Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

5.1.3.2.1 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved official's association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule. DIAA rules and regulations shall then be in effect.

5.1.3.2.2 Withdrawal of level 2 status: If, for two (2) consecutive years, less than the required

number of schools participate in a sport, DIAA may withdraw official recognition for a period of time as determined by the Board of Directors.

5.1.4 Membership on Coed Teams

5.1.4.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons. If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team but if a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

5.2 Sanctioning of Competitions

5.2.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DIAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

5.2.1.1 The event shall not be for determining a regional or national champion.

5.2.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

5.2.1.3 Non-symbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

5.2.1.4 Non-school event organizers shall submit a full financial report to the DIAA office within ninety (90) calendar days of the completion of the event.

5.2.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

5.2.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

5.2.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

5.2.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

5.2.2 Participation in a non-sanctioned event shall result in payment of a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

5.3 All-Star Contests: Junior high/middle school students shall not participate in an all-star event until they

have completed their high school eligibility in that sport.

6.0 Out of Season Athletic Camps and Clinic Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition

6.1 Out of season Athletic Camps and Clinic Sponsorship

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp/clinic may only instruct their own athletes in accordance with 7.5.

6.1.1.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.1.1.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.1.1.1.2 All applicants shall share equally in the funds provided.

6.1.1.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.1.1.1.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

6.2 Commercial Camps and Clinics

6.2.1 Commercial; camps and clinics are defined as a camp/clinic operated for profit which provides coaching or other sports training for a fee.

6.2.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.2.2.1 The student must participate unattached and may not wear school uniforms.

6.2.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.2.2.3 The school may not provide transportation or pay fees.

6.2.2.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide

instruction to his/her returning athletes in a camp or clinic except as in accordance with 7.5.

6.3 Open Gym Programs

6.3.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.3.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.3.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.3.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.3.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.3.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

6.3.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.3.1.7 The participants must provide their own workout clothing.

6.4 Conditioning Programs

6.4.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.4.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.4.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.4.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.4.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.4.1.5 Sport specific equipment is prohibited.

6.4.1.6 The participants must provide their own workout clothing.

6.5 Non School Competition in which Participates are Competing Unattached and are Not Representing Their Schools

6.5.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.5.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

6.5.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.5.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.5.2.3 The school or a school affiliated support group may not provide transportation.

6.5.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.5.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition except as in 7.5.

6.5.3 14 Del.C. §122 (15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non-school teams in that sport.

7.0 Certified and Emergency and Volunteer Coaches, Student Teaching and Coaching Out of Season

7.1 Certified Coaches

7.1.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district. The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

7.1.2 All head coaches shall be required to attend the DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DIAA

office. A school shall pay a \$50.00 fine and the head coach shall be placed on probation if he/ she fails to attend the DIAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school paying a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

7.1.2.1 Certified coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2 Emergency Coaches

7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day. An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DIAA.

7.2.1.1 Emergency coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2.2 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

7.2.3 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

7.2.3.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

7.2.3.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

7.2.3.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

7.2.3.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

7.2.3.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

7.3 Student Teaching and Coaching

7.3.1 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

7.4 Volunteer Coaches

7.4.1 In addition to the members of the school's regular coaching staff, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

7.5 Coaching Out of Season

7.5.1 From August 2nd through June 14th, a certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches or transfer students from other schools who play the coach's sport.

7.5.1.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

7.5.1.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

7.5.1.3 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

7.5.1.4 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

7.5.1.5 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

7.5.1.6 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

7.5.1.7 A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

7.5.2 From June 15th through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches. Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

7.5.2.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal

instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a non-school affiliated organization.

7.5.2.2 A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting where the student has initiated the contact and it was not scheduled. A coaching staff may have multiple two-hour sessions on any given day. Returning school team members shall not receive more than two hours of sports instruction per day.

7.5.2.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out-of-pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues/tournaments or instructional camps/clinics are not prohibited provided that no local school or state educational funds are used.

7.5.2.4 Participation in the formal league/tournament or instructional camp/clinic, or informal instruction shall be open, voluntary and equally available to all returning school team members as well as to members of the student body.

7.5.2.5 A coach in violation of this section shall be suspended from coaching in the specific sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Recognition of Officials' Associations

8.1.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

8.1.2 An official's association which desires to officiate middle school and/or high school contests shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:

8.1.2.1 A letter of request indicating the association's willingness to abide by DIAA rules and regulations.

8.1.2.2 A brief history of the association.

8.1.2.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

8.1.2.4 A description of the association's evaluation and rating system.

8.1.2.5 A description of the association's recruiting and training programs for new members.

8.1.2.6 A membership roster indicating the

number of years of experience at the sub-varsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association.

8.1.2.7 If applicable, letters of recommendation or names of references from leagues which the association has serviced during the past year.

8.1.3 The Officials' Committee shall review the aforementioned documents and, if necessary, meet with the officers of the association to discuss their petition.

8.1.4 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

8.1.5 The Officials' Committee shall report its findings to the DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

8.1.6 The president of the officials' association or his/her designee shall petition the DIAA Board of Directors and the Board shall render a decision.

8.1.7 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.2 Required Use of Officials

8.2.1 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per game per non-approved official.

8.2.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.3 Attendance at Rules Clinics

8.3.1 Officials shall be required each year to both attend the DIAA rules interpretation clinic and to pass the rules examination provided by the DIAA office for the sport(s) they officiate.

8.3.2 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

8.3.3 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to sub-varsity contests until both requirements have been satisfied in the same season.

8.3.4 Attending the fall soccer rules

interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

8.3.5 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

8.3.5.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

8.3.5.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

8.3.5.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

9.0 Awards

9.1 Awards

9.1.1 Member schools and support groups affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments. The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic, not more than \$150.00. Member schools and/or support groups affiliated with member schools are also permitted to sponsor banquets.

9.1.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school. Non-profit groups shall also be permitted to sponsor banquets.

9.1.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

9.1.4 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable. The awards shall have symbolic value only, awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$150.00 per team

or per recipient and shall require prior approval of the Executive Director.

10.0 Use of Influence for Athletic Purposes

10.1 Definition: The use of influence for athletic purposes shall include, but not be limited to, the following:

10.1.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

10.1.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

10.1.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

10.1.4 Offer of special privileges not accorded to other students.

10.1.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s), legal guardian(s) or Relative Caregiver to change residence.

10.2 Illegal Contact with Students, Legal guardians, or a Relative Caregiver

10.2.1 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s), legal guardian(s) or a relative Caregiver in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

10.2.2 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s), legal guardian(s) or a Relative Caregiver, the former must refer the individual(s) to the principal or school personnel responsible for admissions.

10.3 Permitted Activities

10.3.1 A school employee or Board approved volunteer may do the following:

10.3.1.1 Discuss the athletic program with a prospective student or his/her parent(s), legal guardian(s) or Relative Caregiver during an open house or approved visit initiated by the parent(s), legal guardian(s) or Relative Caregiver.

10.3.1.2 Provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

10.3.1.3 Conduct an informational

presentation at a feeder school.

10.4 School Choice

10.4.1 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

10.5 Penalties

10.5.1 The use of influence or illegal contact but not limited to violations of 10.1 and 10.2 by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes may render the student ineligible for up to 1 full school year from the date the charge is substantiated. In addition, the offending school may be placed on probation, as determined by the DIAA Board of Directors, and the offending employee, if a coach, may be suspended for up to one (1) full school year from the date the charge is substantiated.

1009 DIAA Senior High School Interscholastic Athletics

1.0 National Federation of State High Schools, Conferences, Contracts and Equivalency Rules

1.1 National Federation of High School Associations

1.1.1 DIAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DIAA Board of Directors.

1.1.1.1 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DIAA Board of Directors.

1.2 Conferences

1.2.1 Member schools may establish voluntary conference organizations that may be composed of public and non-public schools. When established, they must submit their conferences' proposed membership and its constitution and bylaws to the DIAA Board of Directors and be approved by the DIAA Board of Directors before the schools may enter into any contractual agreements.

1.2.1.1 All subsequent amendments to the constitution and bylaws of the conferences must be compatible with all provisions of the DIAA Regulations; interpretations and with the rulings of the Executive Director, Sportsmanship Committee, and Board of Directors; state tournament regulations; and DIAA approved playing codes.

1.3 Contracts

1.3.1 Contracts between DIAA member schools or between DIAA member schools and full member schools of comparable state associations are encouraged but not required.

1.3.1.1 Conference master contracts are approved substitutes for individual contracts.

1.3.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, appeal may be made to the Executive Director or the DIAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

1.3.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors.

1.3.2 Contracts between DIAA member schools and non-member or associate member schools of comparable state associations are required.

1.3.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DIAA member school being assessed a \$15.00 fine.

1.3.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DIAA Board of Directors unless a signed individual contract is in place.

1.3.3 Contracts shall be interchanged according to the following provisions:

1.3.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

1.3.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier varsity contest.

1.3.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

1.3.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was received in the DIAA office or postmarked prior to the contest in question, and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DIAA Board of Directors.

1.3.4.1 If a game is not played because an out of state opponent qualifies for its state championship series and the date of the playoff game conflicts with the date of the regular season game, a forfeit shall not be awarded.

1.4 Equivalency Rules

1.4.1 A full member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DIAA.

1.4.1.1 Scrimmage shall be defined in as: an informal competition between schools in which the officials are not compensated, a score is not kept, the time periods are

modified, the results of the competition are not reported to the media, the coaches may interrupt the play to provide instruction and the competition is strictly for practice purposes.

1.4.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

1.4.3 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 1.4.2. However, the opposing school shall be exempt from those rules which DIAA has waived for its associate member school.

1.4.4 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

1.4.5 Member schools shall not participate in a practice, scrimmage, or contest with post graduate students or college students. This provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

1.4.6 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

2.0 Eligibility: No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

2.1 Eligibility, Age

2.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.1.1 Requests for a waiver of the age requirement shall only be considered for participation on an unofficial, non-scoring basis in non-contact or non-collision sports

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s), legal guardian(s), or Relative Caregiver in the attendance zone of the school which he/she attends, or be a student 18 years of age or older and living in the attendance zone of the school which he/she attends (see 2.2.1.7), in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by

court. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, shall be granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

2.2.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 Del.C., Ch.4.

2.2.1.5 A student who is a non-resident of Delaware shall be eligible to attend a public school, charter school or career-technical school if, in accordance with 14 Del.C. §607, his/her custodial parent or court appointed legal guardian or Relative Caregiver is a full-time employee of that district.

2.2.1.6 Notwithstanding 2.2.1, a student shall be eligible at a public or vocational-technical school if he/she is enrolled in accordance with 14 Del.C. §202(f), the Caregivers School Authorization.

2.2.1.6.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the

student's legal guardian.

2.2.1.7 A student who reaches the age of majority (18) and leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, provided the student's choice application was properly submitted prior to his/her change of residence.

2.2.1.8 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the high school which he/she represents in order to participate in a practice, scrimmage or contest.

2.3.2 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school. A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements; not a school at which he/she is receiving only specialized educational instruction such as vocational training.

2.3.3 A student who attends the Sterck School shall participate in interscholastic athletics at the Sterck School. If the Sterck School does not sponsor a particular sport, Sterck students shall be eligible to participate in interscholastic athletics at the Christiana High School, the high school in closest proximity to the Sterck School.

2.3.3.1 Notwithstanding 2.3.1 and 2.3.2 above, a shared time student who attends the Sterck School and a mainstream high school during the regular school day shall participate in interscholastic athletics at the Sterck School. If the Sterck School does not sponsor a particular sport, the shared-time student shall be eligible to participate in interscholastic athletics only at the mainstream high school.

2.3.4 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch.4, is obligated to attend the choice school for a minimum of two (2) years unless the students custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible legally enrolled and

consequently would be ineligible to participate in interscholastic athletics.

2.3.5 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.6 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.7 A student who fails to complete a semester or is absent for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from the date of his/her reentry to school.

2.3.8 An ineligible student who practices in violation of 2.2.2 through 2.2.5 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district.

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 2.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with the student being placed with a Relative Caregiver as per 14 Del.C. §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately, when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided that the following has occurred:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney - Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;
or

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to or affecting interscholastic athletic participation.

2.4.3 Transfer Because of Promotion or Administrative Assignment: Transfer because of promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

2.4.4 Transfer Because of a Change in the Program of Study or Financial Hardship: If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.4.1 Documentation for change in the program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.4.1.1 The student's schedule;

2.4.4.1.2 The student's transcript;

2.4.4.1.3 Current course descriptions from both the sending and receiving schools;

2.4.4.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.4.1.5 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.6).

2.4.4.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses; and

2.4.4.2.2 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (see 2.4.6).

2.4.5 Transfer Because of Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for

his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.7 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 Del.C. Ch.4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/ her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

2.4.8 A student who transfers from a school of choice to either a private school, career-technical school or, after completing his/her two-year commitment, to a public charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services..

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters a competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the

player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic. Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to the number of days in the school year provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the regular school

day, that satisfies an unmet graduation requirement.

2.6.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.3.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.6 An ineligible student who practices in violation of 2.6.1, 2.6.2, 2.6.3 or 2.6.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 "Hardship" shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver not shall be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006.9. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade. If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

2.7.2.1 Eighth grade students who are enrolled or transfer to schools that meet the above criteria begin their five years of eligibility for senior high school athletic participation the first year they enter eighth grade.

2.7.3 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

2.7.4 Participation of Postgraduates

2.7.4.1 Participation shall be defined as taking part in a school sponsored practice, scrimmage or contest on or after the first allowable date for practice in that sport.

2.7.4.2 Postgraduates shall not be eligible to participate in interscholastic athletics. All graduates of recognized senior high schools shall be considered postgraduates.

2.7.4.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DIAA requirements.

2.7.4.4 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

2.8 Eligibility of Foreign Exchange Students and International Students

2.8.1 Notwithstanding 2.2, 2.3, and 2.4, foreign

exchange students and international students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

2.8.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

2.8.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

2.8.2 International students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including 2.2.

2.8.3 Once enrolled, foreign exchange and other international students must comply with all DIAA eligibility rules.

2.8.3.1 Athletic recruitment of foreign exchange students or other international students by a member school or any other entity is prohibited, and any such students recruited shall be ineligible.

2.9 Student Eligibility Report Forms

2.9.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.9.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

2.10 Use of an Ineligible Athlete:

2.10.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

2.10.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.10.2.1 If the infraction occurs during a

tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament, team and/or individual awards shall be returned to the event sponsor and team and/or individual records and performances shall be nullified.

2.10.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility and shall be automatic and not subject to refusal by the offending school's opponent.

2.10.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as the affected placements will be adjusted according to the rules of the sport.

2.10.3.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.10.3.1.1 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.10.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 2.10.1 and 2.10.2 shall be imposed.

2.10.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the amount of days up to length of the school

year from the date the charge is substantiated.

2.10.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.7 If an athlete or his/her parent(s), legal guardian(s) or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the amount of days up to the length of the school year from the date the charge is substantiated.

2.11 Determination of Student Eligibility and the Appeal Procedures

2.11.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.11.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.11.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with 14 DE Admin. Code 1006.11.

3.0 Physical Examinations, Weight Control Program for Wrestling and Required Medical Personnel in Attendance at All Football Games.

3.1 Physical examinations

3.1.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after May 1 and before beginning such athletic activity for the current school year.

3.1.2 A certificate to that effect, as well as the parent's, legal guardian's, or Relative Caregiver's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

3.1.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the athlete has been treated for an injury during the preceding sports season, the athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset, an operation has been performed on the athlete during the preceding sports season,

or the athlete has a remedial defect.

3.1.4 The medical history of the student should be available at the time of each examination.

3.1.5 A player who is properly certified to participate in interscholastic athletics but is physically unable to participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school or designee, a statement from a qualified physician that he/she is again physically able to participate.

3.2 Wrestling Weight Control Program

3.2.1 Each year, beginning November 1st and prior to January 15th, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. The official weigh-in for a regularly scheduled dual meet or tournament would establish certification. In addition, each year beginning November 1 and prior to January 15, each wrestler is required to determine his/her lowest allowable competitive weight according to the DIAA Weight Monitoring Program. A wrestler may re-certify at a lower weight class during November 1 and prior to January 15 if his individual weight loss plan allows for it. However, once certified at a weight a wrestler may not weigh-in more than one weight class above the weight of certification without automatically re-certifying at a higher weight. Once re-certified to a higher weight class the wrestler can no longer re-certify lower. After January 14 no wrestler is allowed to re-certify at a lower weight.

3.2.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she last weighed in before that date.

3.2.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

3.2.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

3.2.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the conference secretary without delay.

3.2.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the

certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

3.3 Required Medical Personnel In Attendance at All Football Games

3.3.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service. Failure by the host school to provide this service shall result in a \$100.00 fine.

4.0 Sports Seasons, Practices Sessions and Maximum Game Schedules and Designated Sports Seasons

4.1 Sports Seasons

4.1.1 The fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. A conference championship game must also be completed before the start of the state tournament in that sport and practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouth guards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament. Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule

4.1.2 The winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any winter sport shall not begin earlier than 21 days before the first Friday in December.

4.1.3 The spring sports season shall begin on March 1 and ends with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

4.1.5 A school which conducts practice prior to the first allowable date shall pay a fine of \$100.00 per illegal practice day.

4.1.6 No member school shall participate in a post-season contest without the written approval of the Executive Director.

4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills or mandatory strength training. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's certified, emergency and/or approved volunteer coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete. The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences. However there should be one day of no activity (practice, scrimmage, or contest) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two-hour practice limitation shall pay a \$100.00 fine.

4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their sports season shall be designated by the DIAA Board of Directors

PROPOSED REGULATIONS

and is as follows:

Team Limitations

Individual Limitations

<u>Sport</u>	<u>Season</u>	<u>Week</u>	<u>Week</u>	<u>Day</u>
Fall				
Cross Country (boys and girls)	16 competition dates	+3 competition dates	+3 competition dates	
Field Hockey (girls)	16 contests	3 contest	3 Competition dates	2 halves
Football (boys)	10 contests	1 contest	4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level	
Soccer (boys)	16 Contests	3 contests	3 competition dates	2 halves
Volleyball (girls)	16 competition dates of which 1 date may involve more than 2 teams	3 competition dates	3 competition dates	
Winter				
Basketball (boys and girls)	22 contests	3 contests	3 competition dates	4 quarters
Swimming and Diving (boys and girls)	16 contests	3 contests	3 contests	
Indoor Track (boys and girls)	12 contests	+ 3 contests	+ 3 contests	
Wrestling (boys)	* 18 contests	3 competition dates	3 competition dates	5 matches
Spring				
Baseball (boys)	20 contests	3 contests	3 contests	
Softball (girls)	20 contests	3 contests	3 contests	
Golf (boys)	16 competition dates	3 competition dates	3 competition dates	
Tennis (boys and girls)	16 contests	3 contests	3 contests	
Outdoor Track (boys and girls)	18 competition dates	+3 competition dates	+3 competition dates	
Lacross (boys and girls)	16 contests	3 contests	3 competition dates	4 quarters (boys) or 2 halves (girls)
Soccer (girls)	16 contests	3 contests	3 competition dates	2 halves

The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

+ A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.

* Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

4.3.2 The third contest/competition date in a week shall be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or

spring vacation.

4.3.2.1 A team shall not participate in two different cross country, indoor track or outdoor track meets on the same day.

4.3.2.2 Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

4.3.2.3 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

4.3.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

4.3.3.1 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/competition dates in a week.

4.3.4 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

4.3.4.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DIAA tournament committee.

4.3.5 A student shall participate in a particular sport for only one season during each academic year.

4.3.6 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

4.3.6.1 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and pay a \$100.00 fine.

4.3.6.2 A student who exceeds the weekly or dily contest limitation shall be considered an ineligible athlete and the school subject to the process stipulated in 2.10.

5.0 School/Team Competition, Sanctioning of Competitions, State Championships and All Star Contests

5.1 School/Team Competition

5.1.1 Sponsoring Interscholastic Teams: Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition. Students are considered to be representing a school if the school does any of the following:

5.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation,

entry fees, etc.).

5.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

5.1.1.3 Permits students to compete under the name of the school.

5.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.

5.1.1.5 Presents or displays individual/ team awards.

5.1.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

5.1.2.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

5.1.2.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

5.1.2.3. The participating schools agree to comply with all applicable DIAA rules and regulations as stated in the current DIAA Official Handbook.

5.1.3 Levels of Participation

5.1.3.1 Level 1 or developmental sport - less than twelve (12) participating schools at the varsity level. DIAA rules and regulations shall not be in effect.

5.1.3.2 Level 2 or recognized sport - twelve (12) or more participating schools at the varsity level. Participating schools must petition the DIAA Board of Directors for official recognition of the sport.

5.1.3.2.1 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship. All DIAA rules and regulations shall then be in effect.

5.1.3.3 Level 3 or championship sport sixteen (16) or more participating schools at the varsity level. Upon petition by the sport committee and adoption of a tournament proposal, DIAA shall establish a state championship.

5.1.3.4 Withdrawal of level 2 or level 3 status. If, for two (2) consecutive years, less than the required number of schools participate in a sport, DIAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board of Directors.

5.1.4 Membership on Coed Teams

5.1.4.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons. If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team but if a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

5.1.4.2 Coed teams shall participate only in the boys' state championship tournament/meet.

5.2 Sanctioning of Competitions

5.2.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DIAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

5.2.1.1 The event shall not be for determining a regional or national champion.

5.2.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

5.2.1.3 Non-symbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

5.2.1.4 Non-school event organizers shall submit a full financial report to the DIAA office within ninety (90) calendar days of the completion of the event.

5.2.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

5.2.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

5.2.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

5.2.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

5.2.2 Participation in a non-sanctioned event shall result in payment of a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the

sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school

5.3 State Championships

5.3.1 State Championships: The minimum number of high schools which must sponsor a sport at the varsity level in order for DIAA to approve a state championship shall be sixteen (16).

5.3.1.1 State championship play shall be permitted at the varsity level only in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of and/or has the approval of DIAA.

5.3.1.2 A member school which does not pay all fines incurred during the school year by July 1st shall be ineligible to participate in a state championship event in any sport during the following school year until such time as all fines are paid.

5.3.2 All state championships shall be managed by committees established by the DIAA Board of Directors.

5.3.2.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the DIAA Board of Directors for approval.

5.3.2.2 All financial arrangements, including the collection of monies and expenditures, must be approved by the Executive Director

5.3.2.3 Championship play in other sports must be confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the DIAA Board of Directors.

5.4 All-Star Contests

5.4.1 An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

5.4.2 Students who have completed their eligibility in a sport may participate in all-star contests in that sport, if approved by DIAA, prior to graduation from high school.

5.4.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DIAA.

5.4.4 The all-star contest must be approved by DIAA in accordance with the following criteria:

5.4.4.1 The contest shall not be for determining a regional or national champion.

5.4.4.2 The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

5.4.4.3 The awards given shall be in compliance with 9.0.

5.4.4.4 Exceptions to the adopted rules code for the sport, including uniform regulations, shall require the approval of DIAA.

5.4.5 A full financial report must be filed with the Executive Director within ninety 90 days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$300.00 fine.

5.4.6 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

6.0 Out of Season Athletic Camps and Clinics Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition

6.1 Out of Season Athletic Camps and Clinic Sponsorship

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp may only instruct their returning athletes in accordance with 4.5.

6.1.1.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.1.1.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.1.1.1.2 All applicants shall share equally in the funds provided.

6.1.1.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.1.1.1.4 All applicants shall have one year of prior participation in the sport for which the camp/clinic is intended or, absent any prior participation, he/she shall be

judged by the coach to benefit substantially from participation in the camp/clinic.

6.2 Commercial Camps and Clinics:

6.2.1 Commercial camps and clinics are defined as a camp/clinic operated for profit which provides coaching or other sports training for a fee.

6.2.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.2.2.1 The student must participate unattached and may not wear school uniforms.

6.2.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.2.2.3 The school may not provide transportation or pay fees.

6.2.2.4 The school coach may not require his/her athletes to participate in a camp or clinic, or provide instruction to his/her returning athletes in a camp or clinic except as provided in 7.5.

6.3 Open Gym Programs

6.3.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.3.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.3.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.3.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.3.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.3.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

6.3.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.3.1.7 The participants must provide their own workout clothing.

6.4 Conditioning Programs

6.4.1 A member school may conduct a conditioning program in accordance with the following

provisions:

6.4.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.4.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.4.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.4.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.4.1.5 Sport specific equipment is prohibited.

6.4.1.6 The participants must provide their own workout clothing.

6.5 Non-School Competition in which Participants are Competing Unattached and are Not Representing Their Schools

6.5.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.5.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

6.5.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.5.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.5.2.3 The school or a school affiliated support group may not provide transportation.

6.5.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.5.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition except as in 7.5..

6.5.3 14 Del.C. §122(b)(15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar

teams shall include organized intramural teams as well as non-school teams in that sport.

7.0 Certified, Emergency and Volunteer Coaches, Student Teaching and Coaching and Coaching Out of Season

7.1 Certified Coaches:

7.1.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district. The terms of employment must be for the regular school year and the professional assignment shall be no less than ½ of the school day, exclusive of coaching duties.

7.1.2 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DIAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DIAA office. A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/ she fails to attend the DIAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

7.1.2.1 Certified coaches at all levels of competition shall be required to hold a current certification in adult CPR.

7.2 Emergency Coaches

7.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than ½ of the school day. An individual who meets the requirements of a certified coach but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DIAA.

7.2.1.1 Emergency head coaches at all levels of competition shall be required to hold a current certification in adult CPR

7.2.2 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

7.2.3 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

7.2.3.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

7.2.3.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

7.2.3.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

7.2.3.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

7.2.3.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

7.3 Student Teaching and Coaching

7.3.1 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

7.4 Volunteer Coaches

7.4.1 In addition to the members of the school's regular coaching staff, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

7.5 Coaching Out of Season

7.5.1 From August 2nd through June 14th a certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches or transfer students from other schools who play the coach's sport. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school. A rising ninth grader is a student who has completed eighth grade requirements but is not yet enrolled in ninth grade. A rising eighth grader is a student who has completed seventh grade requirements but is not yet enrolled in eighth grade.

7.5.1.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

7.5.1.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

7.5.1.3 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

7.5.1.4 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

7.5.1.5 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

7.5.1.6 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

7.5.1.7 A coach who is in violation of this section shall be suspended from coaching in the specified sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

7.5.2 From June 15th through August 1st, a certified, emergency or volunteer coach shall be allowed to provide instruction in his/her assigned sport to returning members of the varsity or sub-varsity teams of the school at which he/she coaches. Instructional contact with the aforementioned returning school team members shall be subject to the following conditions:

7.5.2.1 A coach may provide instruction to an unlimited number of his/her returning school team members in formal league/tournament competition or in formal instructional camps/clinics provided the league/tournament or instructional camp/clinic is organized and conducted by a non-school affiliated organization.

7.5.2.2 A coaching staff may provide instruction to a maximum of two returning school team members in an informal setting which means student initiated and non-scheduled. A coaching staff may have multiple two-hour sessions in any given day. Returning school team members shall not receive more than 2 hours of sports instruction per day.

7.5.2.3 A coach shall not receive any compensation, from any source, for the instruction of his/her returning school team members. Reimbursement for out-of-pocket expenses (e.g. gas, food, lodging) incurred by returning school team members and coaches to attend leagues/tournaments or instructional camps/clinics are not prohibited provided that no local school or state educational funds are used.

7.5.2.4 Participation in the formal league/tournament or instructional camp/clinic, or informal instruction, shall be open, voluntary and equally available to all returning school team members as well as members of the student body.

7.5.2.5 A coach who is in violation of this section shall be suspended from coaching in the specified

sport at any DIAA member school for up to the total number of days in the school year from the date the charge is substantiated.

8.0 Recognition of Officials' Associations, Required Use of Officials and Attendance at Rules Clinics

8.1 Recognition of Officials' Associations

8.1.1 The officiating of interscholastic contests in the state of Delaware which involve one (1) or more member schools shall be under the control of the DIAA and such control may include, but not be restricted to, giving examinations, evaluating officials, setting game fees, determining the number of officials per game, and assigning officials.

8.1.2 An official's association which desires to officiate middle school and/or high school contests shall request recognition and approval from DIAA by submitting the following documents to the DIAA Officials' Committee:

8.1.2.1 A letter of request indicating the association's willingness to abide by DIAA rules and regulations.

8.1.2.2 A brief history of the association.

8.1.2.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

8.1.2.4 A description of the association's evaluation and rating system.

8.1.2.5 A description of the association's recruiting and training programs for new members.

8.1.2.6 A membership roster indicating the number of years of experience at the sub-varsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association.

8.1.2.7 If applicable, letters of recommendation or names of references from leagues which the association has serviced during the past year.

8.1.3 The Officials' Committee shall review the aforementioned documents and, if necessary, meet with the officers of the association to discuss their petition.

8.1.4 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

8.1.5 The Officials' Committee shall report its findings to the DIAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

8.1.6 The president of the officials' association or his/her designee shall petition the DIAA Board of Directors and the Board shall render a decision.

8.1.7 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.2 Required Use of Officials

8.2.1 Member schools and tournament sponsors shall be required to use officials approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per game per non-approved official.

8.2.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

8.3 Attendance at Rules Clinics

8.3.1 Officials shall be required each year to both attend the DIAA rules interpretation clinic and to pass the rules examination provided by the DIAA office for the sport(s) they officiate.

8.3.2 Failure on the part of an official to attend the DIAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest during that season.

8.3.3 Failure to satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to sub-varsity contests until both requirements have been satisfied in the same season.

8.3.4 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

8.3.5 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DIAA rules interpretation clinic, he/she may view a videotape of the DIAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

8.3.5.1 No later than the day of the DIAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

8.3.5.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

8.3.5.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

9.0 Awards and Scholarships

9.1 Awards

9.1.1 Member schools and support groups affiliated with a member schools, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments. The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic, no more than \$150.00. Member schools and/or support groups affiliated with member schools are also permitted to sponsor banquets.

9.1.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school. Non-profit groups shall also be permitted to sponsor banquets.

9.1.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

9.1.4 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable. The awards shall have symbolic value only, awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$150.00 per team or per recipient and shall require prior approval of the Executive Director.

9.2 Scholarships

9.2.1 Member schools and support groups affiliated with member schools shall be permitted to present post-secondary scholarships.

9.2.2 Non-profit organizations co-sponsoring a tournament shall be allowed to give post-secondary scholarships to participating schools provided they are not awarded on the basis of team or individual performance in the tournament. Scholarship monies shall be administered in accordance with DIAA and NCAA regulations.

10.0 Use of Influence for Athletic Purposes

10.1 Definition: The use of influence for athletic purposes shall include, but not be limited to, the following:

10.1.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

10.1.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

10.1.3 Preference in job assignments or offer of

compensation for work performed in excess of what is customarily paid for such services.

10.1.4 Offer of special privileges not accorded to other students.

10.1.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s), legal guardian(s) or Relative Caregiver to change residence.

10.2 Illegal Contact with Students, Legal guardians, or a Relative Caregiver

10.2.1 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s), legal guardian(s) or a relative Caregiver in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

10.2.2 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s), legal guardian(s) or a Relative Caregiver, the former must refer the individual(s) to the principal or school personnel responsible for admissions.

10.3 Permitted Activities

10.3.1 A school employee or Board approved volunteer may do the following:

10.3.1.1 Discuss the athletic program with a prospective student or his/her parent(s), legal guardian(s) or Relative Caregiver during an open house or approved visit initiated by the parent(s), legal guardian(s) or Relative Caregiver.

10.3.1.2 Provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

10.3.1.3 Conduct an informational presentation at a feeder school.

10.4 School Choice

10.4.1 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

10.5 Penalties

10.5.1 The use of influence or illegal contact including but not limited to, violations of 10.1 and 10.2 by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes may render the student ineligible for up to 1 full

school year from the date the charge is substantiated. In addition, the offending school may be placed on probation, as determined by the DIAA Board of Directors, and the offending employee, if a coach, may be suspended for up to one (1) full school year from the date the charge is substantiated.

**EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL.C. SECTION 122(D)**

1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (terminology and school bus types are described in the National Standards for School Transportation 1995)

A. Type of Regulatory Action Required

Re-authorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to re-authorize regulation 1001 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (terminology and school bus types are described in the National Standards for School Transportation 1995). The five year review cycle requires that it must be acted on again. The regulation is still needed until the buses placed in production after March 1, 1998, that are referenced in the standards, are no longer operating in the school system.

C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The re-authorized regulation addresses school bus standards not academic achievement.

2. Will the regulation help ensure that all students receive an equitable education? The re-authorized regulation addresses school bus standards not equity issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The re-authorized regulation addresses school bus standards and students' health and safety are a major consideration in developing the standards.

4. Will the regulation help to ensure that all students' legal rights are respected? The re-authorized regulation addresses school bus standards not students' legal rights.

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

6. Will the regulation place unnecessary reporting or

administrative requirements or mandates upon decision makers at the local board and school levels? The re-authorized regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? **Delaware Code** requires that the regulation be acted on every five years.

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

DUE TO SPACE LIMITATIONS THE REGULATION IS NOT BEING RE-PRINTED HERE. THE REGULATION IS AVAILABLE FROM THE REGISTRAR OR ON THE WEB AT:

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

**EDUCATION IMPACT ANALYSIS
PURSUANT TO 14 DEL.C. SECTION 122(D)**

1105 School Transportation

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 1105 School Transportation in order to add "Emergency Days as forgiven by the Department of Education" to section 13.6 items, 13 6 1 through 13.6.4 and to clarify the language. This section addresses reimbursement contracts and allowances for school districts and contractors.

C. Impact Criteria

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

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

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

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation addresses school transportation issues which includes respect for students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The changes must be put into regulation according to 14 Del.C. Ch. 29.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs associated with amending this regulation.

1105 School Transportation

1.0 Responsibilities of Local Superintendents: Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district's school transportation program.

1.7 Assume prime responsibility for student conduct.

2.0 Conditions for School Bus Contractors: School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks. District transportation supervisors may restrict a driver from operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

3.0 Responsibilities of School Bus Drivers: Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

3.2.1 Operate the school bus in a safe and efficient manner.

3.2.2 Conduct pre-trip and post-trip checks on the vehicle.

3.2.3 Establish and maintain rapport with passengers.

3.2.4 Maintain discipline among passengers.

3.2.5 Meet emergency situations effectively.

3.2.6 Communicate effectively with district and school staff.

3.2.7 Maintain effective contact with the public.

3.2.8 Complete reports as required by the state or school district.

3.2.9 Complete required training programs satisfactorily.

3.2.10 Refrain from using profane or indecent language or tobacco while on duty.

3.2.11 Dress appropriately.

3.2.12 Pickup and drop-off students at designated stops.

3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.

3.2.14 Report suspected cases of child abuse to the school principal or designated official.

3.2.15 Notify the district transportation supervisor of any school bus accident.

3.3 A statement requiring a report of a physical examination on forms designated by the Department of Education.

4.0 Qualifications and Responsibilities of School Bus Aides

4.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year.

4.1.1 Be at least 18 years of age.

4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level- and meet the same requirements (pre-licensing) specified for school bus drivers in the **Del.C.**

4.1.3 File with the district transportation supervisor a notarized affidavit (the same as the school bus driver affidavit) attesting to acceptable criminal history pending an official state and federal criminal record report.

4.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers.

4.2 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:

4.2.1 Assist in loading and unloading of students, including lift operation.

4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.

4.2.3 Ensure that all students remain seated at all times.

4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.

4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.

4.2.6 Perform record keeping tasks related to student attendance and bus assignment.

4.2.7 Monitor and report student misbehavior according to established procedure.

4.2.8 Assist the driver in keeping the interior of the bus clean.

4.2.9 Assist students with disabilities with personal needs associated with their disabilities.

4.2.10 Assist in bus evacuation drills.

4.2.11 Work cooperatively with all school personnel and parents.

4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

5.0 Student Conduct on School Buses: School Districts shall have a policy concerning the behavior of students on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension of bus riding privileges.

5.1 Obey the driver promptly, and be courteous to the driver and to fellow students. Students are to conduct themselves while on the bus in such a way that it will not distract the driver from the job of driving.

5.2 Be at their bus stop on time for pickup.

5.3 Wait for the bus on the sidewalk or shoulder, not the roadway.

5.4 Keep a safe distance from the bus while it is in motion.

5.5 Enter the bus without crowding or disturbing others and occupy their seats immediately.

5.6 Get on or off the bus only when it is stopped.

5.7 Remain seated and facing forward. No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the driver's attention or interfere with the driver's vision.

5.8 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.

5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from the bus or bus stop along the highway. Before crossing the road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and

not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

6.0 Procedures for Operating Buses: Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be discharged from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action immediately. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

See 3 DE Reg. 942 (1/1/00)

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the

driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Animals are not permitted on school buses; however, a service animal is permitted if a physician certifies that it is required.

6.16 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

7.0 Accident Reports: All drivers or contractors shall

complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 Name, address and telephone number of the driver.

See 3 DE Reg. 942 (1/1/00)

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is complete. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

- Disposition of any litigation.
- Disposition of any summonses.
- Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- Amount of property damage other than to vehicles involved.
- Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

8.0 Transportation Benefits: Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district administrations and for pupils in grades 7-12 whose legal residences are two (2) miles or more from the public schools to which they would normally be assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or caregiver as described in 14 Del.C. §202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to

which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.

8.5.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique traffic hazard from a parent must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Students otherwise ineligible to ride a bus may ride if a physician certifies that a student is unable or should not walk from home to school and return.

9.0 Bus Capacities: Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child. A mixture of the criteria will be used to plan loads when pupils come from both of the above groups. Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

10.0 Loading and Unloading: Each school shall have a

loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/unloading operations.

11.0 Unique Hazards: Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents, vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of concern.

11.2.5 List any actions to resolve the problem taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State

Police; and the Department of Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process

11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

12.0 Contingency Plans: Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies. The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

13.0 Reimbursements for School Bus Ownership and or Contracts: School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September.

13.3 Any transportation costs caused by grade reorganizations and/or pupil re-assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local

school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district-owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.

13.6 ~~Reimbursement~~ Contract allowances for buses when there are Emergency Days (forgiven by the Department of Education), Specially Declared Holidays or Strikes by Teachers.

13.6.1 ~~School bus contractors and school districts~~ shall be paid the normal rate of pay as provided for in their contract, less the allowance for ~~operation including fuel, oil, tires, and maintenance and administration.~~ Driver (including layover allowance) and aide allowances shall be paid.

13.6.2 ~~Contractors~~ School bus contractors and school districts with buses assigned to midday kindergarten or vocational-technical trips shall be ~~reimbursed for the amount of the driver's allowance plus the administrative allowance~~ paid the normal rate of pay as provided for in their contract, less the allowance for fuel.

13.6.3 ~~School districts operating district-owned, leased, or lease-purchase buses shall be reimbursed based on the formula for district reimbursement, less the allowance for operation which includes fuel, oil, tires, and maintenance.~~ The additional mileage allowance for contractor and school district buses will not include fuel and maintenance allowances.

13.6.4 ~~Districts with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.~~

13.6.5 ~~4~~ The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.

14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with

the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

15.0 Transportation Allowances for Individuals: Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the parent or guardian and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage traveled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be approved by the Department of Education.

16.0 Cost Records: Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

17.0 Bus Replacement Schedules: The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced (it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

18.0 School Bus Inspections: The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

19.0 Transportation for Students with Disabilities: Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is

not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/programs for children with disabilities.

See 3 DE Reg. 1548 (5/1/00)

20.0 Transportation for Alternative Programs: Costs for transportation shall be paid by the state from funds appropriated for student transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport students to and from the Alternative Programs or other special transportation designs will not be paid by the state from the school transportation appropriation and shall be included in the Alternative Program budget and be paid from the state allocation for alternative programs and/or the districts 30% share. Planning committees for these programs shall include the transportation supervisors who will be providing services. In addition, those supervisors must coordinate planning with and submit their transportation plans to the Education Associate for School Transportation at the Department of Education.

21.0 Drugs and Alcohol Testing

21.1 Content:

21.1.1 Pursuant to 14 **Del.C.** §2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

21.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non-DOT forms, and the employer shall follow the same procedures set forth herein.

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

“**Alcohol**” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular exercising weight alcohols, including methyl or isopropyl alcohol.

“**CDL**” means a commercial drivers license issued pursuant to 21 **Del.C.** Chapter 26.

“Department” means the Delaware Department of Education.

“**DOT**” means the United States Department of Transportation.

“**Drug**” means the controlled substances for which tests are required under the provisions of 49 U.S.C. 49 §31306 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

“**Employer**” means school bus contractors or school districts and charter schools when they directly

employ school bus drivers..

“**Negative result**” means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

“**Positive result**” means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

21.3 Federal Regulations: Employers shall comply with the drug and alcohol testing regulations

issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. ' 31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

21.4 Drug and Alcohol testing program requirements:

21.4.1 The employer shall:

21.4.1.1 Be responsible for compliance with all federal and state regulations;

21.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

21.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium/Third Party Administrator Medical Review Officer (C/TPA/MRO), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

21.4.2 The Department shall:

21.4.2.1 Bid the contract for the drug and alcohol testing program;

21.4.2.2 Monitor the drug and alcohol testing program;

21.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

21.4.3.1 Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (SAP) evaluation, treatment and return-to-duty testing before another pre-employment test is allowed.

21.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow-up drug and/or alcohol testing recommended by the SAP evaluation is implemented.

21.5 Pre-employment Testing

21.5.1 School bus drivers with no CDL and aides with no prior experience must have a negative pre-employment drug test, and the employer must receive a negative result before the prospective employee can operate a school bus or serve as an aide.

21.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

21.5.3 Employers shall provide Federal Drug Testing Custody and Control (CCF) forms to new school bus drivers and non-DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and school district or charter school.

21.5.4 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.5.5 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

21.6 Random Testing

21.6.1 Employers shall provide the C/TPA/MRO a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary school district or charter school of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

21.6.2 The C/TPA/MRO shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

21.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the school district or charter school.

21.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

21.6.5 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.6.6 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter

shall be sent to the transportation supervisor for the school district or charter school and Department.

21.7 Post-Accident and Reasonable Suspicion Testing

21.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and/or alcohol test. Forms shall note the employer and school district and charter school.

21.7.2 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.7.3 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

Herman Holloway Campus
1901 N. DuPont Highway
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

Robert Smith
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing.

Regulations For Training Of Paid Feeding Assistants

Introduction

These regulations allow for the use of Paid Feeding Assistants, as single task workers, to provide feeding assistance in nursing facilities and assisted living facilities. To ensure consistency in the training of Feeding Assistants, the Division of Long Term Care Residents Protection has developed minimum requirements for Feeding Assistant training programs. Each Feeding Assistant training program shall be approved by the Division of Long Term Care Residents Protection. The intent of these regulations is to provide more residents with help in eating and drinking, or encouraging the resident so that more of the meal is consumed, making mealtime a more pleasant experience, and potentially reducing the incidence of unplanned weight loss and dehydration. The determination of which residents may receive assistance from a Feeding Assistant shall be based on the needs and potential risks to a resident as observed and documented in the resident's plan of care and the comprehensive assessment of the resident's functional capacity. While these regulations are not applicable to volunteers and family members, those individuals are encouraged to complete a Feeding Assistant training program.

73.104 Instructors - Registered nurses, advanced practice nurses, dietitians, speech pathologists, or a combination of such professionals, who train Feeding Assistants. Occupational therapists may be defined as instructors for purposes of training in special needs as described in Section 73.303C.

73.201 Facilities implementing Feeding Assistant

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

Statutory Authority: 16 Delaware Code,
Section 1101 (16 Del.C. §1101)

NOTICE

Regulations For Training Of Paid Feeding Assistants

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has prepared four (4) revised proposed Regulations For Training of Paid Feeding Assistants pursuant to 16 Del.C. Section 1101(f). The remainder of the regulations addressing issues such as definitions, general requirements, training program requirements, curriculum and competencies appear as final regulations elsewhere in this edition of the Register of Regulations. The following four (4) proposed regulations, revised or extended after public hearings on February 3 and February 4, will be the subject of a further public hearing: Regulations 73.104, 73.201, 73.203A and the Introduction.

Invitation For Public Comment

A public hearing will be held as follows:
Monday, April 5, 2004, 9:00 AM
Room 301, Main Building

Programs shall have written policies and procedures in place that include each item in Section 73.200.

73.203A Each unlicensed or uncertified individual who feeds and hydrates residents in a facility, with the exception of family members and volunteers, shall successfully complete a Feeding Assistant training program approved by the Division of Long Term Care Residents Protection.

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

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Chapter 26A, Section 2631 (16 Del.C. §2631)

NOTICE

Nature of the Proceedings

Pursuant to 16 Delaware Code, Chapter 26A, Section 2631, these new regulations "Hearing Aid Loan Bank Program Regulations" establish requirements for a Hearing Aid Loan Program within the Division of Public Health for children under 3 years of age with a diagnosed hearing impairment.

Notice of Public Hearing

The Community Health Care Access Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Hearing Aid Loan Bank Program Regulations. The public hearing will be held on March 24, 2004 at 9:30 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Community Health Care Access Section
Jesse Cooper Building
Federal and Water Streets, Dover, Delaware
Telephone: (302) 744-4554

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by March 23, 2004. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by March 31, 2004 to:

David P. Walton, Hearing Officer
Division of Public Health

P.O. Box 637
Dover, Delaware 19903-0637

108 Hearing Aid Loan Bank Program Regulations

1.0 Purpose

1.1 The program is established for the purpose of lending hearing aids on a temporary basis to a parent or legal guardian of an eligible child to ensure that children under the age of three (3) years will have maximum auditory input during the critical period of language learning.

2.0 Definitions

2.1 The following words shall have the meanings indicated:

"Director" means the Director or designee of the Division of Public Health, Department of Health and Social Services.

"Division" means the Division of Public Health, Department of Health and Social Services.

"Eligible Child" means a child who is a resident of the State, identified by a licensed audiologist as having a hearing impairment, has no immediate access to a hearing aid, and is under the age of three (3) years.

"Licensed Audiologist" means an individual who is licensed to practice audiology under Chapter 37 of Title 24 of this Code.

"Loan Bank" means hearing aid loan bank.

"Loan Period" means time periods to include initial (up to six months) and extension for additional three month periods, with required documentation.

"Program" means the Hearing Aid Loan Bank Program.

"Program Manager" means the program manager of the Hearing Aid Loan Bank Program.

3.0 Eligibility

3.1 A child under three (3) years of age is eligible if confirmed through:

3.1.1 A prescription from a licensed audiologist;

3.1.2 Birth certificate or other documentation for proof of age;

3.1.3 Address of residence to document Delaware residency;

3.1.4 No immediate access to another hearing aid under Medicaid, the State children's health program or private insurance, as per insurance denial letters; and

3.1.5 Proof of the parent or legal guardian's inability to pay for the hearing aid based on:

3.1.5.1 Proof of family income by review of three of the most recent consecutive pay stubs for each parent or legal guardian, using the Federal Poverty Guidelines as the reference. If such pay stubs are not available, documents as approved by program manager must

be submitted.

3.1.5.2 Documentation of insurance coverage, and/or medical assistance status.

3.2 A parent or legal guardian who borrows a hearing aid for an eligible child shall:

3.2.1 be the custodian of the hearing aid;

3.2.2 return the hearing aid immediately to the loan bank upon the expiration of the loan period or receipt of a suitable permanent hearing aid, whichever occurs first;

3.2.3 be responsible for the proper care and use of the hearing aid;

3.2.4 be responsible for any damage to or loss of the hearing aid; and

3.2.5 sign a written agreement provided by the program manager that states the term and conditions of the loan.

3.3 For a child to be eligible for one or more extensions of the initial six month loan period, a parent or the guardian of the child must show:

3.3.1 That there is no immediate access to another hearing aid under Medicaid, the State children's health program or private insurance;

3.3.2 The child's parent or legal guardian currently does not have the financial means to obtain immediate access to another hearing aid; and

3.3.3 Proof of making reasonable efforts to obtain immediate access to another hearing aid, such as pursuing insurance coverage for hearing aids or pursuing alternate financial assistance to cover the hearing aid; and

3.3.4 Has met initial eligibility criteria prior to age three; not to exceed two extensions during the third year of life.

4.0 Penalty for Non-Compliance

Under the Authority granted to the Department of Health and Social Services in 16 Del. C. Section 107, "whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department of Health and Social Services, shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

DIVISION OF SOCIAL SERVICES

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

NOTICE

Relative Caregivers' (Non-Parent) Transitional Resource Program

In compliance with the State's Administrative

Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the policy in the Division of Social Services Manual (DSSM) as it relates to time limitations for the Relative Caregivers' (Non-Parent) Transitional Resource Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2004.

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

Summary Of Proposed Regulations

DSSM 6103 is being amended to permit non-parent caregivers more time to access this service; specifically, changing the timeframe from 90 to 180 days.

DSS PROPOSED REGULATION #04-05

REVISION:

6103 Eligibility

Applicants must meet the following eight criteria to receive assistance from the Relative Caregivers' (Non-Parent) Transitional Resource Program:

1. Relationship-The child is living with a relative within the 5th degree of relationship (DSSM 3004).

2. Age-The child is less than 18 years of age.

3. Residence-Applicants must reside in Delaware to be eligible for benefits. Persons including the homeless (those with no fixed address or not living in a permanent dwelling) who currently live in Delaware and plan to stay, regardless of the length of time they have been here, meet the residency requirement.

4. Time Limitation-The child has been living in caregiver(s) home less than or equal to ~~90~~180 days.

5. Income - The income of the caregiver cannot exceed 200% of the Federal Poverty Level based on the household size. The caregiver's household includes the caregiver and his/her children. The income of the child moving in with the caregiver and any siblings (or half-siblings) who also reside in the home is not counted.

6. Resources-Eligibility will be determined without regard to the child or caregiver(s) resources.

7. Citizenship-The child is a citizen or lawfully admitted alien.

8. Need-The child's need is for one or more of the covered services.

DIVISION OF SOCIAL SERVICES

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

NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Food Stamp 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, 2004.

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

Summary Of Proposed Changes

- Excludes educational income (financial assistance) for food stamp purposes.
- Removes the reference to PAN (Program of Assistance Nutrition) income which is no longer counted for food stamp purposes per federal rules.

Citations

- Farm Bill Section 4102 (Simplified Definition of Income) allows a State the option to exclude certain types of income that are not counted under the State's Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs. Under this provision, States are allowed to exclude: educational assistance not counted under Medicaid; State complementary assistance not counted under

section 1931 of Medicaid; and any type of income not counted under section 1931 of Medicaid or TANF.

- The Food and Nutrition Service (FNS) issued Administrative Notice 04-2003: Guidance on the Treatment of Nutritional Assistance Program (NAP) Benefit. Under the new guidance, States will no longer count NAP benefits from Puerto Rico when determining eligibility and benefits.

DSS PROPOSED REGULATIONS #04-06

REVISIONS:

9056 Earned Income

[273.9(b)(1)]

Earned income includes:

1. All wages and salaries for services performed as an employee, including money withheld from an employee's earnings to pay certain expenses such as child care or medical expenses as a vendor payment to a third party, and

2. The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in DSSM 9074. Consider ownership of rental property a self-employment enterprise; however, income derived from the rental property will be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer/boarder, except foster care boarders, or roomer only will also be considered self-employment income and need not meet the 20-hour rule.

3. Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, to the extent that they are not reimbursements. Training allowances under WIA, other than earnings as specified in #5 of this Section are excluded from consideration as income.

4. Payments under Title I (VISTA, etc.) of the Domestic Volunteer Service Act of 1973 (P.L. 93-113).

5. Earnings to individuals who are participating in on-the-job training programs under Section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act (WIA). This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment. Earnings include monies paid under WIA and monies paid by the employer.

~~6. Educational assistance which has a work requirement (such as work study, assistantship or fellowship with a work requirement) in excess of the amount excluded~~

~~under DSSM 9059.~~

9057 Unearned Income

[273.9(b)(2)]

Unearned income includes, but is not limited to:

1. Assistance payments from Federal or federally aided public assistance programs, such as Supplemental Security Income (SSI) or Delaware's Temporary Assistance To Needy Families Program (TANF), Refugee Cash Assistance (RCA), General Assistance (GA) programs or other assistance programs based on need.

2. Annuities, pensions, retirement, veteran's benefits, disability benefits, workman's compensation, unemployment compensation, social security, strike benefits, foster care payments for children or for adults who are considered members of the household, gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

3. Support or alimony payment made directly to the household from non-household members.

4. ~~Scholarships, education grants, deferred payment loans for educational benefits, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amount excluded. Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.~~

A lottery winner that receives a set amount each year will have those winnings counted as unearned income. The income shall be averaged over a 12-month period of time.

For example, a household receives \$24,000 each November from a lottery win. The \$24,000 is averaged over a 12-month period and \$2,000 counted on a monthly basis.

Earned Income Tax Credit (EITC) payments are not to be treated as income. [See DSSM 9059 (H)].

~~6. 5. Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under DSSM 9049 (8). Such trust withdrawals will be considered income in the month received, unless otherwise exempt under the provisions of DSSM 9059. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of DSSM 9059 .~~

~~7. 6. For a household containing a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with DSSM 9081.2.~~

~~8. 7. The earned or unearned income of an individual disqualified from the household for intentional~~

Program violation, in accordance with DSSM 2023 will continue to be attributed in their entirety, to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN in accordance with DSSM 9012 , or for being an ineligible alien in accordance with DSSM 9007 , will continue to be counted as income, less a prorata share for the individual.

Procedures for calculating a prorata share are described in DSSM 9076 .

~~9. PAN income — Puerto Rico gives cash instead of food stamp coupons. The income counts as unearned income when households apply for food stamps and received PAN funds from Puerto Rico in the same month. PAN means Programa De Asistencia Nutricional.~~

~~10. 8. State and local energy assistance is counted as income. Delaware does not have state or local energy assistance programs.~~

9059 Income Exclusions

[273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and includes meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows:

1. Department of Housing and Urban Development (HUD) vendor payments. Rent or mortgage payments made to landlords or mortgages by HUD are excluded.

~~2. Educational assistance vendor payments. Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance directly to the household.~~

~~3. 2. Vendor payments that are reimbursements. Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household as described in DSSM 9059 E .~~

~~4. 3. Other third party payments. Other third party payments shall be handled as follows: Moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not~~

excluded. If the person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. The following are examples of third party payments:

a) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

b) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

c) A household receives court-ordered monthly support payments in the amount of \$400. Later, \$200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income.

Money deducted or diverted from a court-ordered support or alimony payment to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household.

Examples of court-ordered payments:

a) A court awards support payments in the amount of \$400 a month and in addition orders \$200 to be paid directly to a bank for repayment of a loan. The \$400 payment is counted as income and the \$200 payment is excluded from income.

b) A civil service retiree is entitled to a retirement payment of \$800 a month. However, \$400 is diverted to his ex-wife by court order for child support. This is similar to a wage garnishment. Since the retirement benefits are legally obligated and otherwise payable to the retiree's household, the \$800 is budgeted for food stamp purposes.

Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

~~5.4.~~ Payments made by the Division or by another government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

~~6.5.~~ All or part of a public assistance grant

which would normally be provided in a money payment but which is diverted to a protective payee will be considered income to the household.

~~7.6.~~ Emergency Assistance payments will be excluded if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

~~8.7.~~ Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. The amount is counted as earned income when withheld because the money is legally obligated and otherwise payable to the employee at that time.

~~9.8.~~ Some companies make credits available to employees to use to buy health insurance, annual leave, sick leave or life insurance. The employee cannot elect to receive a cash payment and loses the credits if not used. The amount shows up on the pay stub when used. These flexible benefits are not counted as income because they are not legally obligated and otherwise payable to the employee as earnings.

Some companies give employees "points" as incentive to arrive to work on time, work so many weeks without taking leave, etc. These points have a monetary value that appears on the pay stub and the points are subject to taxes. The employee can only redeem the points for commodities or goods from a catalog provided by the employer; they cannot convert the points to cash. These points are excluded from income because the funds are not otherwise payable to the household.

B. Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 a quarter.

~~C. Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like. Grants, Loans and Scholarships - Do not count educational financial assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid as income. Exclude any other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses.~~

~~To be excluded, the educational assistance listed above must be:~~

- ~~A. Awarded to a household member enrolled at a:~~
- ~~1. Recognized institution of post-secondary education,*~~
 - ~~2. School for the handicapped,~~
 - ~~3. Vocational education program,~~
 - ~~4. Vocational or technical school, or~~

5. Program that provides for obtaining a secondary school diploma or the equivalent;

*—Means any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance for that State. The institution must be authorized to provide an educational program beyond secondary education or provides a program of training to prepare students for gainful employment, including correspondence schools at that level.

B. Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

1. Tuition;
2. Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved;
3. Books;
4. Supplies;
5. Transportation;
6. Miscellaneous personal expenses, other than the normal living expenses of room and board, of the student incidental to attending a school, institution, or program;
7. Dependent care (amounts excluded cannot be excluded under the income dependent care deduction under DSSM 9060), and
8. Origination fees and insurance premiums on educational loans.

Exclusions based on use for the allowable expenses listed above must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expenses are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income first when possible, and the remainder, if any, shall be excluded from earned educational income.

An individual's total educational income exclusions cannot exceed that individual's total educational income received.

D. All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded according to DSSM 9059 C . A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

9063.3 Income Averaging

[273.10(c)(3)]

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

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

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

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

The following shows an example of contract and hourly work:

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

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

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

DIVISION OF SOCIAL SERVICES

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

NOTICE

Food Stamp Program Electronic Benefit Transfer

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to Electronic Benefit Transfer (EBT).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2004.

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

Summary Of Proposed Regulations

1. The proposed regulation reflects the change from coupons to Electronic Benefit Transfer (EBT) in regards to the replacement of benefits policy.

2. Replacement of food stamp benefits issued via EBT is restricted to:

- Food purchased with benefits and destroyed in a disaster or misfortune;
- Unauthorized access to benefits after the client has reported a lost or stolen EBT card to e-Funds; and
- Unauthorized access to benefits due to agency or vendor error.

3. DSS will not replace food stamp benefits withdrawn from an EBT account:

- Before the client reports the EBT card lost or stolen to the e-Funds Customer Support Unit; or
- Due to misuse by an authorized representative.

Citations

- 7 CFR §274.6, Replacement Issuances to Households

- 7 CFR §274.12, EBT Issuance System Approval Standards

DSS PROPOSED REGULATIONS #04-02

REVISIONS:

9079.1 Replacing Coupons

~~We will replace an issuance to a household when the household reports that:~~

- ~~- Its coupons were not received in the mail or were stolen from the mail, were destroyed in a household misfortune, or were improperly manufactured or mutilated; or~~
- ~~- Food purchased with food stamps was destroyed in a household misfortune.~~

~~We will not provide a replacement issuance to a household when:~~

- ~~- The coupons are lost, stolen, or misplaced after receipt;~~
- ~~• The coupons are totally destroyed after receipt in other than a disaster or misfortune;~~
- ~~• Coupons sent by registered or certified mail are signed for by anyone residing with or visiting the household; or~~
- ~~• The household or its authorized representative has not signed the Affidavit Form 324. Whenever an affidavit is signed by an authorized representative, use this format:~~

~~"_____ " for "_____ "
(authorized representative) (household head)~~

~~Where FNS has issued a disaster declaration and the household is eligible for disaster food stamp benefits, the household cannot receive both the disaster allotment and a replacement allotment for a misfortune.~~

~~In order for a replacement to be considered non-countable, the replacement must not result in a loss to the Program.~~

9079.2 Replacement Restrictions

~~Provide a replacement issuance only if a household timely reports a loss orally or in writing and signs a Form 324 (affidavit) if the original benefit (coupons) has not been returned to DSS at the time of the request for replacement. A report is considered timely if it is made within the following timeframes:~~

~~For Monthly Benefits:~~

- ~~• From the mailing date until the end of the month~~

~~Example: May's monthly benefit is mailed on 5/6. The~~

household has until 5/31 to report non-receipt. If the report is made on 5/31, the household has until 6/10 to sign an affidavit in the office or return a signed affidavit to DSS.

For Daily Benefits (Initial, Expedited, Supplemental, Restoration, or Replacement):

- For benefits issued from the 1st of the month through the 20th of the month, until the end of the month.

Example: Benefit is mailed on 4/10. The household has until 4/30 to report non-receipt. If the report is made on 4/30, the household has until 5/10 to sign an affidavit in the office or return a signed affidavit to DSS.

- For benefits issued from the 21st through the 30/31st of the month, until the end of the next month.

Example: Benefit is mailed on 9/25. The household has until 10/31 to report non-receipt. If the report is made on 10/31, the household has until 11/10 to sign an affidavit in the office or return a signed affidavit to DSS.

Limit the number of replacement issuances a household may receive as follows:

- Limit replacement issuances to a total of two (2) countable replacements in six (6) months for:
- coupons not received in, or stolen from the mail.

Limit replacement issuances per household to two (2) countable replacements in six (6) months for coupons reported as destroyed in a household misfortune. This limit is in addition to the above limits.

Do not limit the number of replacements for coupons which were improperly manufactured or mutilated or food purchased with food stamp benefits which was destroyed in a household misfortune.

A replacement issuance is not considered a countable replacement if:

- The original or replacement benefit is returned or otherwise recouped by the Division, or
- The replacement is being issued due to an Agency issuance error.

Provide replacement issuances in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which are to be replaced up to their full value.

9079.3 Household Statement of Non-Receipt (Affidavits)

Prior to issuing a replacement, obtain from a household member a signed statement attesting to the household's loss

(Form 324). Do not require an affidavit if:

- The reason for the replacement is that the coupons were improperly manufactured, or mutilated; or
- The original issuance has already been returned.

The affidavit may be mailed to DSS if the household member is unable to come into the office because of age, disability, or distance from the office and is unable to appoint an authorized representative.

If the affidavit is not received by DSS within ten (10) days of the date of the report, do not issue a replacement. If the tenth day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, consider the statement timely received.

Retain a copy of the affidavit in the case record.

9079.4 Time Limits for Making Replacements

Provide replacement issuances to households within ten (10) days after report of non-delivery or loss, or within two (2) working days of receiving the signed household statement required in DSSM 9079.3, whichever date is later. Delay replacement of mutilated coupons until a determination of the value of the coupons can be made in accordance with DSSM 9079.6.

If the household has already been issued the maximum allowable number of countable replacements, delay subsequent replacements until DMS has verified that the original issuance was returned. Due to the time it takes for benefits to return, it may not be known at the time of the replacement request whether prior replacements are countable replacements, and, therefore, whether the household has reached its limit. In such cases, restore the allotment when DMS verifies that the limit on countable replacements has not been reached.

After a household has been issued the maximum allowable number of countable replacements, continue to allow the household to sign affidavits (Form 324) for subsequent replacements. However, the replacements will not be issued until DMS verifies that the original issuance was returned.

For example, a client received replacement coupons for the months of January and March. In June, the client reports non-receipt of June's coupons:

- Client signs an affidavit.
- Staff sends affidavit to DMS Payments Office.
- DMS investigates the replacement request.
- DMS replaces the coupons in August only after verifying the original benefit had returned.

Deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

Inform the household of its right to a fair hearing to

contest the denial or delay of a replacement issuance. Do not make replacement while the denial or delay is being appealed.

9079.5 Replacing Issuances Lost in the Mail or Stolen Prior to Receipt by the Household

- 1) Determine if the coupons were:
 - Validly issued,
 - Actually mailed and if sufficient time has elapsed for delivery, or
 - If it was returned in the mail.
- 2) Determine, to the extent possible, the validity of the request for a replacement. This includes determining whether the original benefit has been returned to DMS.
- 3) Issue a replacement if the household is eligible.
- 4) Take other action, such as correcting the address in DCIS, as warranted.

9079.6 Replacing Issuances After Receipt by the Household

Upon receiving a request for replacement of an issuance reported as destroyed after receipt by the household, determine if the benefit was validly issued. Comply with all applicable provisions in DSSM 9079.2 – 9079.4, as well as following procedures for each type of replacement.

1) Prior to replacing destroyed coupons, or destroyed food that was purchased with food stamp benefits, determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. Verify such occurrences through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit. Provide replacements of coupons, and/or food in the actual amount of the loss, but not exceeding one month's allotment, unless the issuance includes restored benefits, which are to be replaced at full value.

2) Households cannot receive a replacement for coupons lost or stolen after receipt.

3. Provide replacements for improperly manufactured or mutilated coupons as follows:

Replace coupons received by a household and subsequently mutilated or found to be improperly manufactured in the amount of the loss to the household. Replace mutilated coupons when three-fifths of a coupon is presented by the household. Examine the improperly manufactured or mutilated coupon to determine the validity of the claim and the amount of coupons to be replaced.

If the value of the improperly manufactured or mutilated coupons can be determined, replace the unusable coupons in a dollar-for-dollar exchange. If the value of the improperly manufactured or mutilated coupons cannot be determined, cancel the coupons by writing "cancelled" across the face of

the coupons. Request that DMS forward the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing.

To replace these improperly manufactured or mutilated coupons, send the coupons and a completed Form FNS-135 (Affidavit of Return or Exchange of Food Coupons) to DMS Payments Office.

9079.7 Delivery of Coupons

After the first report of non-receipt of a mailed benefit, or when circumstances exist that indicate that the household may not receive its coupons through the mail, benefits must be sent to the over-the-counter issuance sites.

The requirement for a household to pick up its coupons and the length of time for which we require the household to pick up its benefits are not adverse actions under §5304 and there is no jurisdiction for a fair hearing over these requirements.

9079.1 Replacing Food Benefits Issued via Electronic Benefit Transfer (EBT)

Food stamp benefits issued via EBT can only be replaced under two conditions:

- Unauthorized use of the account based on the conditions listed below; and
- Food purchased with food stamp benefits that was destroyed in a household misfortune or disaster.

The primary payee (cardholder) has the sole responsibility for the security and safeguarding of the EBT card and PIN, including the careful selection of authorized representatives.

9079.2 Unauthorized use of the account.

The issuance of food stamp benefits via EBT is designed to minimize the loss and theft of client benefits. DSS will rarely be liable for replacement benefits due to loss of benefits from an EBT account.

DSS will replace benefits issued via EBT due to the unauthorized use of the account only if the loss occurred:

- after the client reports the EBT card lost or stolen to the e-Funds Customer Support number at 1-800-526-9099;
- because of DSS local office card/PIN issuance error; or
- because of an unlawful or other erroneous action on the part of DSS or the EBT contractor.

DSS will not replace food stamp benefits withdrawn

from an EBT account before the client reports the EBT card lost or stolen to the e-Funds Customer Support Unit.

DSS will replace food stamp benefits withdrawn from an EBT account after the client reported the EBT card lost or stolen to the e-Funds Customer Support Unit. Before issuing the replacement, the time/date of the report to e-funds and the time/date of the loss of benefits must be verified.

DSS will not replace EBT issued benefits that were misused by an authorized representative.

A household member, or authorized representative, must sign and return to the food stamp office the Affidavit for Replacement of EBT Food Benefits attesting to the loss within ten days of the report of the loss. Failure to sign and return the affidavit within ten days of the report of the loss may result in a denial of the replacement request.

9079.3 Food purchased with food stamp benefits that was destroyed.

We may issue replacement of food benefits for food destroyed in a household misfortune or disaster.

The household may be entitled to a replacement of the actual value of the loss which cannot exceed the allotment issued for one month.

The household must report the household misfortune or disaster within ten days of the loss.

DSS must verify the household's misfortune or disaster. Disasters can include fire, floods, or hurricanes. Household misfortunes can include a breakdown in the refrigerator or freezer or the loss of electricity causing food to spoil.

Verification of a household's misfortune or disaster can include statements from community agencies, the Red Cross, fire departments, home visits, or other acceptable collateral contact.

There is no limit on the number of times a household may receive replacement of food destroyed in a household misfortune or disaster.

If a household is eligible for emergency benefits under a disaster program, the household cannot receive both the emergency benefits and replacement benefits for the same time period.

Replacements of destroyed food cannot be used to offset food stamp overpayment claims.

9079.4 Affidavit for Replacement of EBT Food Benefits

A household member, or authorized representative, must sign the Affidavit for Replacement of EBT Food Benefits attesting to the loss within ten days of the report of the loss.

The household will not receive a replacement if the affidavit is not received by DSS within ten days of the report of the loss.

If the tenth day falls on a weekend or holiday, DSS will

consider the affidavit as received timely if received on the next business day.

DSS will provide replacement benefits within ten days of the reported loss or within two working days of receiving the affidavit, whichever is later.

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code,
Chapter 74A (7 Del.C. Ch. 74A)

NOTICE

- 1. Title Of The Regulations:**
Regulations Governing Aboveground Storage Tanks
- 2. Brief Synopsis Of The Subject, Substance And Issues:**
The Regulations Governing Aboveground Storage Tanks (ASTs) were created under the authority of the Jeffrey Davis Aboveground Storage Tank Act, Title 7, Del.C. Chapter 74A. The draft Regulations comprise five sections addressing AST installations, AST upgrades, AST inspections, and financial responsibility and remediation requirements for ASTs.
- 3. Possible Terms Of The Agency Action:**
- 4. Statutory Basis Or Legal Authority To Act:**
Title 7, Del.C. Chapter 74A, The Jeffrey Davis Aboveground Storage Tank Act.
- 5. Other Regulations That May Be Affected By The Proposal:**
None known
- 6. Notice Of Public Comment:**
A Public Hearing will be held March 30, 2004 at 6:00pm at the DNREC, 391 Lukens Drive, New Castle, DE office.
- 7. Prepared By:**
Jill Williams Hall , 302-395-2500 Date February 13, 2004

Summary of Draft Regulations Governing Aboveground Storage Tanks promulgated pursuant to Title 7 Del. C., Chapter 74A, The Jeffrey Davis Aboveground Storage Tank Act.

The Delaware Department of Natural Resource and Environmental Control is responsible for protecting, preserving and enhancing the environmental quality of water, air and land of the State. In addition, the General Assembly of the State of Delaware has found "that it is therefore necessary to provide for more stringent control of the installation, operation, retrofitting, maintenance, repair, abandonment, and/or removal of aboveground storage tanks (ASTs) to prevent releases and where releases occur, to detect and remediate them at the earliest possible stage, thus minimizing further degradation of soil, air, surface water, and groundwater and promoting public safety."

The Regulations Governing Aboveground Storage Tanks are intended to address existing and potential sources of pollution that may result from ASTs. To ensure the prevention and early detection of a release of a regulated substance should one occur, new tanks are required to meet acceptable design and installation criteria and existing tanks are required to upgrade by a schedule set forth to comparable standards. AST design criteria promulgated under these Regulations will minimize the risk of Regulated Substances impacting the environment. Release confirmation and remediation standards are set forth to require the clean-up of any Release that does occur.

The Regulations are divided into five sections. The first section, Part A, includes registration requirements including fees, a list of standards referenced in the Regulations, alternative procedures approval requirements, release preparedness plan, release indication and reporting requirements, and specifications for confidentiality claims.

Part B details the specific requirements governing the design and construction of new aboveground storage tanks, including requirements for secondary containment, overflow and spill prevention, leak detection and inerting requirements for ullage volumes of new ASTs without a floating roof. Requirements for the upgrade of existing aboveground storage tanks, requirements for out of service ASTs and requirements for removal, permanent closure in place and permanent change in contents are included in this section.

Part C details the requirements for the inspection, monitoring, testing and record keeping for all aboveground storage tanks.

Part D details the requirements for showing proof of financial responsibility by owners and operators of aboveground storage tanks.

Part E details the requirements for conducting site assessments and remediation of sites with contamination resulting from a release of a regulated substance from an

aboveground storage tank.

DUE TO THE LENGTH OF THE REGULATION THE FULL TEXT IS NOT BEING PUBLISHED. THE REGULATION IS AVAILABLE FROM THE REGISTRAR OR ONLINE.

Adobe Acrobat

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)

REGISTER NOTICE

- 1. Title Of The Regulations:**
Amendments To Shellfish Regulations
- 2. Brief Synopsis Of The Subject, Substance And Issues:**
Oyster harvesting regulations need to be updated to cover the harvest season and the harvestable amount of oysters that can be taken annually in the direct market natural oyster bed fishery.
- 3. Possible Terms Of The Agency Action:**
None
- 4. Statutory Basis Or Legal Authority To Act:**
7 Del.C. §1902, 7 Del.C. §2106
- 5. Other Regulations That May Be Affected By The Proposal:**
None
- 6. Notice Of Public Comment:**
Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on March 29, 2004 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 12:00 PM, March 31, 2004.
- 7. Prepared By:**
Richard Cole (302) 739-4782, January 10, 2003.

**Proposed Amendments To Shellfish Regulation
Pertaining To Oysters****3768 Oyster Harvest Quota**

1.0 ~~The oyster harvest quota for the 2003 season is 11,640 bushels. The oyster harvest quota for the direct market fishery from the state owned natural beds will be established annually by the Department.~~

See 5 DE Reg. 2140 (5/1/02)

See 6 DE Reg. 1356 (4/1/03)

3772 Oyster Harvesting Seasons

1.0 ~~It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds except during the seasons beginning at sunrise on May 12, 2003 and ending at sunset on June 28, 2003 and beginning sunrise on September 1, 2003 and ending at sunset on December 31, 2003. It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds except during a season that will be established by the Department.~~

See 5 DE Reg. 2140 (5/1/02)

See 6 DE Reg. 1356 (4/1/03)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 6010, (7 Del.C. §6010)

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

Tidal Finfish Regulations

2. Brief Synopsis of the Subject, Substance and Issues:

The coast wide requirements for recreational black sea bass fishermen, as mandated by the Atlantic States Marine Fisheries Commission's Fishery Management Plan (FMP), in 2004 are a 12.0 inch minimum size length with a 25 fish creel limit and a closed season from September 8, 2004 through September 21, 2004 and December 1, 2004 through December 31, 2004. Delaware currently has an twelve (12) inch minimum size limit, a 25 fish creel limit and a closed season during September 2 through September 15 and December 1 through December 31. It is proposed to amend Tidal Finfish Regulation No. 3507 to establish adjusted dates for the closed season to September 8, 2004 through September 21, 2004 and December 1, 2004 through December 31, 2004 in order to be in compliance with the Atlantic States Marine Fisheries Commission's FMP.

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Summer Flounder

Fishery Management Board, the Mid-Atlantic Management Council and the National Marine Fisheries Service are to use to establish conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2004. Delaware is obligated to cap the summer flounder recreational harvest at 139,000 fish for 2004. This is 35,000 more fish than were estimated to have been landed in 2003. Given that over one million marine recreational fishing trips occur annually in Delaware and that the 2000 year class of summer flounder was reported to be above average thus suggesting that more fish may be available for harvest in 2004; it is unadvisable to significantly alter the management measures that were in place for 2003. However, landings information suggests that by increasing the bag limit by two additional fish only a minimal impact on total harvest will occur. As such, it is proposed that the seven management options that were presented for the 2003 fishing season, which included size ranges from 16 inches to 17.5 inches and creel limits ranging from 4 fish to 7 fish, and a variety of seasonal closures be presented again for public review and comment. The adopted management approach for 2003 included a 17.5 inch minimum size, and 4 fish creel limit. This particular option could be slightly adjusted by adding two additional fish to the creel limit for 2004. It is anticipated that the minimum size limit of 17.5 inches would be the major factor restraining the catch in 2004.

3. Possible Terms Of The Agency Action

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware

4. Statutory Basis Or Legal Authority To Act:

7 Del. C. § 903, 7 (e)(2)(a)

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

None

6. Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on these proposed amendments will be held on March 25, 2004 at 7:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 30, 2004.

7. Prepared By:

Richard Cole, (302) 739-4782, January 13, 2004

3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons; Quotas (Formerly Tidal Finfish Reg. 23)

(Penalty Section 7 Del.C. 936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length.

3.0 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.

4.0 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.

5.0 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 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.

6.0 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 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 and 2001.

7.0 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.

8.0 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 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.

9.0 It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

10.0 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.

11.0 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.

12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land black sea bass during the periods beginning at 12:01 AM on September ~~2~~ 8, 200~~3~~ 4 and ending at midnight on September ~~15~~ 21, 200~~3~~ 4 and beginning at 12:01 AM on December 1, 200~~3~~ 4 and ending at midnight on December 31, 200~~3~~ 4.

See 1 DE Reg.1767 (5/1/98)

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

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

See 4 DE Reg 1665 (4/1/01)

See 4 DE Reg 1859 (5/1/01)

See 5 DE Reg 2142 (5/1/02)

See 6 DE Reg. 348 (9/1/02)

See 6 DE Reg. 1230 (3/1/03)

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

(Penalty Section 7 Del.C. 936(b)(2))

1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen and one-half (17.5)~~ inches between the tip of the snout and the furthest tip of the tail. (Note: size limit to be determined in combination with seasonal closure and creel limit.)

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen and one-half (17.5)~~ inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed. (Note: size limit to be determined in combination with seasonal closure and creel limit.)

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

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

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

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

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

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

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

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging. (Note: size limit to be determined in combination with seasonal closure and creel

limit.)

See 1 DE Reg 1767 (5/1/98)

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

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

See 4 DE Reg 1552 (3/1/01)

See 5 DE Reg 462 (8/1/01)

See 5 DE Reg. 2142 (5/1/02)

See 6 DE Reg. 1358 (4/1/03)

Opening Option	Final Day	Number of Bag Open Days	Minimum Limit	Size
1	01-Jan	31-Jul	212	7 16"
2	01-Jan	06-Aug	218	5 16.5"
3	01-Jan	23-Aug	235	5 17"
4	25-May	02-Aug	70	7 16"
5	25-May	09-Aug	77	5 16.5"
6	25-May	27-Aug	95	5 17"
7	01-Jan	31-Dec	365	4 17.5"
8	01-Jan	31-Dec	365	6 17.5"

DIVISION OF SOIL AND WATER CONSERVATION

Statutory Authority: 7 Delaware Code,
Section 6010, (7 Del.C. §6010)

REGISTER NOTICE

SAN # 2001-21

1. Title Of The Regulations:

Delaware Sediment and Stormwater Regulations.

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

Currently, the Regulations specify a hierarchy of preference when stormwater management practices are designed for new land development projects. The regulations would be amended to allow a greater degree of flexibility for the types of practices that could be considered for approval. This change will result in more low-impact stormwater practices such as bio-retention, bio-swales and buffers being used to meet water quality requirements.

The existing design criterion for the water quality requirement is to provide extended detention for the first inch of runoff. This would be changed to a specific design storm for the corresponding land use. The proposed regulation changes provide more incentives for using "Conservation Design" resulting in site development with less paved surface and less runoff.

3. Possible Terms Of The Agency Action:

No sunset date is applicable.

4. Statutory Basis Or Legal Authority To Act:

Title 7, Delaware Code, Chapter 40, The Sediment and Stormwater Law

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

N/A

6. Notice Of Public Comment:

Final hearing scheduled for April 20, 2004, 6:00 p.m. at the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

7. Prepared By:

Frank M. Piorko 302-739-4411 2/10/04

Section 1 - Scope

1. Stormwater runoff may reasonably be expected to be a source of pollution to waters of the State, and may add to existing flooding problems. The implementation of a statewide sediment and stormwater program will prevent existing water quantity and water quality problems from becoming worse, and in some cases, reduce existing problems.

2. Sediment and stormwater approvals are required for land changes or construction activities for residential, commercial, ~~silvicultural~~, industrial, or institutional land use which are not exempted or waived by these Regulations. Requirements under these Regulations do not apply to agricultural land management practices unless the Conservation District or the Department determines that the land requires a soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for the development of such a plan, or to implement a plan developed by a Conservation District.

3. The Department intends that, to the extent possible, the provisions of these Regulations be delegated to either the Conservation Districts, local governments, or other State agencies. Those program provisions which are subject to delegation include sediment and stormwater management plan approval, inspection during construction, post-construction inspection, and education and training. Initial consideration regarding delegation of program components shall be given to the Conservation Districts.

4. The implementation of a stormwater utility represents a comprehensive approach to program funding and implementation. The activities which may be undertaken by a stormwater utility include not only assessment, collection, and funding activities, but also carrying out provisions of adopted stormwater management plans. These provisions may include contracting for such services as project construction, project maintenance, project inspection, and enforcement of installation and maintenance

requirements imposed with respect to approved land disturbing activities.

Section 2 - Definitions

As used in these regulations, the following terms shall have the meanings indicated below:

"Adverse Impact" means a negative impact to land or waters resulting from a construction or development activity. The negative impact includes increased risk of flooding; degradation of water quality; increased sedimentation; reduced groundwater recharge; negative impacts on aquatic organisms; negative impacts on wildlife and other resources, and threatened public health.

"Agricultural Land Management Practices" means those methods and procedures generally accepted by the Conservation Districts and used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources.

"Applicant" means a person, firm, or governmental agency who executes the necessary forms to obtain plan approval ~~or a permit~~ for a land disturbing activity.

"Appropriate Plan Approval Agency" means the Department, Conservation District, county, municipality, or State agency that is responsible in a jurisdiction for review and approval of sediment and stormwater management plans.

"As-Built Plans or Record Documents" means a set of engineering or site drawings that delineate the specific approved ~~permitted~~ stormwater management facility as actually constructed.

"Certified Construction Reviewer" means those individuals, having passed a Departmental sponsored or approved training course, who provide on-site inspection for sediment control and stormwater management in accordance with these regulations.

"Delegation" means the acceptance of responsibility by a Conservation District, county, municipality, or State agency for the implementation of one or more elements of the statewide sediment and stormwater management program.

"Department" means the Department of Natural Resources and Environmental Control.

"Designated Watershed or Subwatershed" means a watershed or subwatershed proposed by a Conservation District, county, municipality, or State agency and approved by the Department. The Department may establish additional requirements in these watersheds and subwatersheds due to existing water quantity or water quality problems. These requirements shall be implemented on an overall watershed or subwatershed master plan that is developed for water quality and/or water quantity protection.

"Detention Structure" means a permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored

runoff at controlled rates.

“**Develop Land**” means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

“**Developer**” means a person undertaking, or for whose benefit, activities covered by these regulations are commenced and/or carried out.

“**Drainage Area**” means that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.

“**Easement**” means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

“**Erosion and Sediment Control**” means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

“**Exemption**” means those land development activities that are not subject to the sediment and stormwater requirements contained in these regulations.

“**Grading**” means excavating, filling (including hydraulic fill) or stockpiling of earth materials, or any combination thereof, including the land in its excavated or filled condition.

“**Green Technology Best Management Practices (BMP's)**” means those practices that achieve stormwater management objectives by applying the principles of filtration, infiltration and storage most often associated with natural vegetation and undisturbed soils while minimizing a reliance on structural components. They may also be constructed using an imported soil medium and planted with vegetation designed to promote the natural hydrologic process. These practices include, but are not limited to, vegetative filtration, riparian buffer plantings, bio-retention areas, vegetative flow conveyance, as well as recharge and surface storage in undisturbed natural areas.

“**Infiltration**” means the passage or movement of water through the soil profile.

“**Land Disturbing Activity**” means a land change or construction activity for residential, commercial, silvicultural, industrial, and institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into State waters or onto lands in the State, or which may result in accelerated stormwater runoff, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

“**Off-site Stormwater Management**” means the design and construction of a stormwater management facility that is necessary to control stormwater from more than one land disturbing activity.

“**On-site Stormwater Management**” means the design and construction of stormwater management

practices that are required for a specific land disturbing activity.

“**Person**” means any State or federal agency, individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or other political subdivision of this State, any interstate body or any other legal entity.

“**Redevelopment**” means a land disturbance activity that alters the use of land but does not necessarily alter the pre-development runoff characteristics.

“**Responsible Personnel**” means a foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project.

“**Sediment**” means soils or other surficial materials transported and/or deposited by the action of wind, water, ice or gravity as a product of erosion.

“**Sediment and Stormwater Management Plan**” (or **Detailed Plan**) means a plan for the control of soil erosion, sedimentation, stormwater quantity, and water quality impacts resulting from any land disturbing activity.

“**Stabilization**” means the prevention of soil erosion by surface runoff or wind through the establishment of a soil cover through the implementation of vegetative or structural measures. Examples include, but are not limited to, straw mulch with temporary or permanent vegetation, wood chips, and stone or gravel ground cover.

“**Standard Plan**” means a set of pre-defined standards and/or specifications for minor land disturbing activities that may preclude the preparation of a detailed plan under specific conditions.

“**State Waters**” means any and all waters, public or private, on the surface of the earth which are contained within, flow through or border upon the State or any portion thereof.

“**Stormwater**” means the runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

“**Stormwater Management**” means:

- for water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and

- for water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

“**Stormwater Utility**” means an administrative organization that has been established for the purposes of funding sediment control, stormwater management or flood control planning, design, construction, maintenance, and overall resource needs by authorized and imposed charges.

“**Tidewater**” means water that alternately rises and falls due to the gravitational attraction of the moon and sun and is under the regulatory authority of Delaware Code, Title 7, Chapter 72. Examples of tidewaters include the Atlantic Ocean, the Delaware Bay, and the Delaware Inland Bays.

“**Variance**” means the modification of the minimum sediment and stormwater management requirements for specific circumstances where strict adherence of the requirements would result in unnecessary hardship and not fulfill the intent of these regulations.

“**Waiver**” means the relinquishment from sediment and stormwater management requirements by the appropriate plan approval authority for a specific development on a case-by-case review basis.

“**Water Quality**” means those characteristics of stormwater runoff from a land disturbing activity that relate to the chemical, physical, biological, or radiological integrity of water.

“**Water Quantity**” means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

“**Watershed**” means the total or partial drainage area contributing stormwater runoff to a single point.

Section 3 - Exemptions, Waivers, and Variances

1. The following activities are exempt from both sediment control and stormwater management requirements established by these regulations:

A. Agricultural land management practices, unless the local Conservation District or the Department determines that the land requires a new or updated soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for the development of such a plan, or to implement a plan developed by a Conservation District;

B. Developments or construction that disturb less than 5,000 square feet;

C. Land development activities which are regulated under specific State or federal laws which provide for managing sediment control and stormwater runoff. An example of this exemption would be specific permits required under the National Pollutant Discharge Elimination System when discharges are a combination of stormwater and industrial or domestic wastewater or which must comply with Parts 122, 123, and 124 of Title 40 of the Code of Federal Regulations. The Department shall ensure that all land developments which are regulated under specific State or federal laws are coordinated with delegated plan approval agencies to ensure compatibility of requirements

D. Projects which are emergency in nature that are necessary to protect life or property such as bridge, culvert, or pipe repairs and above ground or underground electric and gas utilities or public utility restoration. The emergency

nature of a project may preclude prior plan review and approval, but subsequent inspection may necessitate sediment control or site stabilization in accordance with the provisions of this Chapter. The appropriate plan approval agency shall be notified orally or in writing within 48 hours of the initiation of such emergency activity.

The appropriate plan approval agency shall determine and approve of the emergency nature of a project. If the nature of the emergency will require more than 120 days to accomplish construction, formal approval shall be obtained for sediment control and stormwater management. These activities must still comply with other State, federal, and local requirements.

E. Commercial forest harvesting operations that meet the requirements of the Department of Agriculture under Subchapter VI, Chapter 29, Title 3, of the Delaware Code.

2. Appropriate Plan Approval Agencies may grant waivers from the stormwater management requirements of these regulations for individual developments provided that a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate the proposed development. A separate written waiver request shall be required if there are subsequent additions, extensions, or modifications which would alter the approved stormwater runoff characteristics to a development receiving a waiver.

A. A project may be eligible for a waiver of stormwater management for both quantitative and qualitative control if the applicant can demonstrate that:

(1) The proposed project will return the disturbed area to a pre-development runoff condition and the pre-development ~~land use cover~~ land use cover is unchanged at the conclusion of the project; or

(2) The proposed project consists of a linear disturbance of less than ~~six (6)~~ ten (10) feet in width; or

(3) The project is for an individual residential detached unit or agricultural structure, and the total disturbed area of the site is less than one acre; or

(4) The proposed project is for agricultural structures in locations included in current soil and water conservation plans that have been approved by the appropriate Conservation District.

B. A project may be eligible for a waiver or variance of stormwater management for water quantity control if the applicant can demonstrate that:

(1) The proposed project will not generate an increase in the 2-year post-development peak discharge rate of more than ten (10) percent above the 2-year pre-development peak discharge rate and will have no adverse impact on the receiving wetland, watercourse, or waterway; or

(2) Provisions will be made or exist for a nonerosive conveyance system to tidewater by either a

closed drainage system or by open channel flow that has adequate capacity to contain the runoff events being considered as a requirement of these regulations; or

(3) The location of a project within a watershed would aggravate downstream flooding by the imposition of peak control requirements.

3. The plan approval agency may grant a written variance from any requirement of these regulations if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of these regulations will result in unnecessary hardship and not fulfill the intent of these regulations. A written request for variance shall be provided to the plan approval agency and shall state the specific variances sought and the reasons for their granting. The plan approval agency shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the applicant.

Section 4 - Departmental Responsibilities

1. The Department is responsible for the implementation and supervision of the sediment and stormwater program which is established by Chapter 40, Title 7, Delaware Code. This responsibility shall include, but not be limited to, the authority to:

A. Provide technical and other assistance to Conservation Districts, counties, municipalities, federal, and State agencies in implementing this Chapter;

B. Develop and publish, as regulation components, minimum standards, guidelines and criteria for delegation of sediment and stormwater program components, and model sediment and stormwater ordinances for use by Conservation Districts, counties, State agencies, and municipalities;

C. Review the implementation of all components of the statewide sediment and stormwater management program that have been delegated to either the Conservation Districts, counties, municipalities, or other State agencies in reviews to be accomplished at least once every three years;

D. Require that appropriate sediment and stormwater management provisions be included in all new erosion and sediment control plans developed pursuant to these regulations;

E. Cooperate with appropriate agencies of the United States or other states or any interstate agency with respect to sediment control and stormwater management;

F. Conduct studies and research regarding the causes, effects, and hazards of stormwater and methods to control stormwater runoff;

G. Conduct and supervise educational programs with respect to sediment control and stormwater management;

H. Require the submission to the Department of records and periodic reports by Conservation Districts, tax ditch organizations, county, and municipal agencies as may

be necessary to carry out these regulations;

I. Review and approve designated watersheds;

J. Establish a maximum life of three years for the validation of approved plans. These regulations shall specify variances which expand this time limitation in specific situations; and

K. Establish a means of communication, such as a newsletter, so that information regarding program development and implementation can be distributed to interested individuals.

2. Matters of policy, procedures, standards, criteria, approvals, inspection, or enforcement relating to the Sediment and Stormwater Chapter shall be established by the Department subject to the jurisdiction of the Secretary of the Department. Sediment and stormwater programs or portions of programs which are delegated to the Conservation Districts, counties, municipalities, or State agencies shall include sediment and stormwater criteria consistent with the standards, procedures, and regulations of the Department.

A variation of requirements by the delegated agency on a specific watershed will not be valid unless approved by the Department. All State and federal development in the watershed shall be reviewed subject to the same variations and requirements by the delegated State agency or Department as appropriate.

3. In situations where public notification and comment are required before an action is taken by the Department, the Regulatory Advisory Committee shall have an opportunity to review the proposed Departmental action and provide input to the Department regarding the action.

Section 5 - Criteria for Delegation of Program Elements

1. Conservation Districts, counties, municipalities, and State agencies may seek delegation of four program elements relating to the implementation of the statewide sediment and stormwater program. Delegation may be granted by the Secretary for review and approval of sediment and stormwater management plans, inspection during construction, subsequent maintenance inspection, and education and training. Program elements that are delegated shall be implemented according to Chapter 40 and these regulations.

2. The Secretary, or his designee, shall grant delegation of one or more program elements to any Conservation District, county, municipality, or State agency seeking delegation that is found capable of providing compliance with Chapter 40 and these regulations. The final decision regarding delegation shall be made only after an opportunity has been provided for public review and comment. Initial consideration regarding delegation of program elements shall be given to the Conservation Districts. The Conservation Districts, having unique capabilities and area wide responsibilities are in ideal

positions to coordinate and implement local sediment and stormwater programs.

3. Requests for delegation of more than one program element may be accomplished by the submission of one request for all the elements requested. A concern by the Department over one element will not jeopardize delegation of other requested program elements.

4. To be considered capable of providing compliance with Chapter 40 and these regulations, applications for delegation of program elements shall contain the following requisite items.

A. Requests for delegation of plan approval responsibility shall include the following information:

(1) Ordinance or program information detailing the plan approval process,

(2) Plan review check lists and plan submission requirements,

(3) Sediment and stormwater criteria, including waiver and variance procedures, that meet minimum standards established by these regulations,

(4) Assurance of adequate personnel allocations and expected time frames for plan review which meet the requirements of Section 8(9), and

(5) Assurance that plan reviewers will attend Departmental training programs in related fields such as wetlands identification, subaqueous permits requirements, etc.

B. Requests for delegation of inspection during construction shall include the following information:

(1) Inspection and referral procedures,

(2) Time frames for inspection of active land disturbing activities,

(3) Inspection forms,

(4) Assurance of adequate personnel allocations or a timetable to obtain adequate personnel,

(5) Criteria for the Certified Construction Reviewer if utilized, and

(6) Procedures and time frames for processing complaints.

C. Requests for delegation of maintenance inspection responsibility shall include the following information:

(1) Inspection and referral procedures,

(2) Inspection forms,

(3) Time frames, not exceeding one year, for inspection of completed stormwater management structures, and

(4) Assurance of adequate personnel allocation or a timetable to obtain adequate personnel.

D. Requests for delegation of education and training responsibility shall include the following information:

(1) Types of educational and training activities to be accomplished,

(2) Frequency of activities,

(3) Names and backgrounds of those individuals conducting the training, and

(4) Procedures and timetables to notify the Department of educational programs.

5. A Conservation District, county, municipality, or State agency which has been granted delegation of one or more program elements may establish alternative requirements which are compatible with or are more stringent than Departmental requirements. These alternative requirements may be implemented only when prior Departmental approval has been granted. These alternative requirements shall apply in lieu of the provisions of these regulations in the specific program element that has been delegated. Alternative requirements shall be implemented only after public notice has been provided which would allow for public review and comment prior to Departmental approval.

6. Delegation of authority for one or more program elements may be granted for a maximum time frame of three years. After three years a new application to the Department must be made. Over the time frame for which delegation has been granted, the Department will evaluate delegation implementation, coordinate review findings with the delegated authority, and determine if the new delegation should be granted.

7. A Conservation District, county, municipality, or State agency requesting or renewing delegation shall submit a written request to the Secretary on or before January 1 of the year immediately preceding the fiscal year for which delegation or renewal of delegation is sought.

8. The Secretary shall, in writing, grant or deny delegation on or before April 1 of the year during which delegation is sought. The Secretary may not deny a requested delegation unless opportunity has been afforded to the appropriate officials to present arguments. Delegation shall be effective July 1 of that year and extend no more than three years, unless renewed. In the event that the Department does not act on the renewal request by April 1, the delegated authority submitting the request would be entitled to continue operating for a subsequent three year time period unless action is taken by the Department to suspend the program.

9. If the Secretary determines that a delegated program falls below acceptable standards established by these regulations, delegation may be suspended after opportunity is afforded for a hearing. During a period of suspension, the program element shall revert to the Department for implementation. Funds set aside by a delegated agency, that were collected through fees established by the plan approval agency, shall be transferred to the Department for use if delegation is suspended.

10. A delegated authority may sub-delegate program elements, with Departmental concurrence, to a stormwater

utility or other responsible entity or agency.

11. The Department shall maintain, and make available upon request, a listing of the current status of delegation for all jurisdictions within the State.

Section 6 - ~~Permit Plan Approval Fees, Maintenance Fees, and Performance Bonds~~

1. The establishment of permit plan approval fees, not involving stormwater utilities, shall be in accordance with the following items:

A. Delegation of program elements will depend, to a large extent, on funding and personnel commitments. If the delegated jurisdiction has a source of funding that is provided through State General or local revenues, then the implementation of the delegated component will not necessitate the imposition of a permit plan approval fee to cover the cost of the delegated program component.

B. In the event that one component of an overall sediment and stormwater management program is not funded through the use of general or special funds, a non-refundable permit plan approval fee will be collected at the time that the sediment and stormwater management plan or application for waiver or variance is submitted or approved. The permit plan approval fee will provide for the unfunded costs of plan review, administration and management of the ~~permitting office approval agency~~, construction review, maintenance inspection, and education and training. The plan review or permit approval agency, whether delegated or the Department, shall be responsible for the collection of the permit plan approval fee.

Unless all program elements in a county or municipality have been delegated to a single agency, the funds collected not supporting the plan review function shall be distributed to the appropriate agencies.

C. The number of needed personnel and the direct and indirect expenses associated with those personnel shall be developed by the agencies requesting delegation in a specific jurisdiction in conjunction with and with the concurrence of the Department. Those expenses will then form the basis for determining unit plan approval costs.

D. Prior to plan approval, a fee may be assessed by the appropriate plan approval agency for those activities approved prior to July 1, 1991 for which construction will initiate after July 1, 1991.

E. Where the Department becomes the designated plan approval agency, the Department may assess a plan review and construction review fee. That fee shall not exceed \$80.00 per disturbed acre per project.

F. The use of Certified Construction Reviewers for sediment control and the submission of "As Built or Record Document" certification regarding stormwater management construction may reduce the inspection requirements for the delegated agency but may not eliminate that inspection requirement. Periodic overview inspections

will still be necessary to ensure construction management.

2. The imposition of a financial guarantee, based on existing local authority, may be required by the plan approval agency to ensure that construction of the stormwater management practices was accomplished according to the approved sediment and stormwater management plan. The developer, when required, shall submit to the plan approval agency a surety or cash bond, or irrevocable letter of credit prior to the issuance of any building or grading permit for construction of any land disturbing activity that requires a stormwater management facility.

The amount of the security shall not exceed 150% of the total estimated construction cost of the stormwater management facility. The financial guarantee so required shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management plan, compliance with all the provisions of these regulations, and other applicable laws and regulations, and any time limitations. The financial guarantee, fully or partially, shall not be released without a final inspection of the completed work and, when required, after submission of "As Built or Record Document" plans, and after written confirmation by the design engineer that construction was accomplished according to the approved plans. A partial release of the financial guarantee shall be allowed only to the extent that the work already accomplished would warrant such release.

3. A maintenance fee may be required on approvals granted for stormwater management structures that will be maintained by a Conservation District, county, or municipality. A fee mechanism shall be established prior to the final release of any required financial guarantee or final approval of the completed stormwater management structure by the designated construction review agency.

Section 7- Criteria for Implementation of a Stormwater Utility

The implementation of a stormwater utility will necessitate the development of a local utility ordinance prior to its implementation. There are essential components that an ordinance must contain to function as a funding mechanism for stormwater management and those components shall include, but not be limited to, the following items:

1. The financing of a stormwater utility with a user charge system must be reasonable and equitable so that each user of the stormwater system pays to the extent to which the user contributes to the need for the stormwater system, and that the charges bear a substantial relationship to the cost of the service. The use of county and municipal taxpayer rolls and accounting systems are allowed for the assessment and collection of fees.

2. The intent of the utility must be clearly defined

regarding program components that are to be funded through the utility. Those components may include but not be limited to the following activities:

- A. Preparation of long range watershed master plans for stormwater management,
- B. Annual inspections of all stormwater management facilities, both public and private,
- C. Undertaking regular maintenance, through contracting or other means, of stormwater management structures that have been accepted for maintenance,
- D. Plan review and inspection of sediment control and stormwater management plans and practices, and
- E. Retrofitting designated watersheds, through contracting or other means, to reduce existing flooding problems or to improve water quality.

3. The authority for the creation of the stormwater utility and the imposition of charges to finance sediment and stormwater activities is conferred in Chapter 40, Title 7, Delaware Code. The application of a stormwater utility by means of a local ordinance shall not be deemed a limitation or repeal of any other powers granted by State statute.

4. The creation of a stormwater utility shall include the following components:

- A. The boundaries of the utility, such as watersheds or jurisdictional boundaries as identified by the local governing body,
- B. The creation of a management entity,
- C. Identification of stormwater problems,
- D. Method for determining utility charges,
- E. Procedures for investment and reinvestment of funds collected, and
- F. An appeals or petition process.

5. As established by local ordinance, the local governing agency shall have responsibility for implementing all aspects of the utility including long range planning, plan implementation, capital improvements, maintenance of stormwater facilities, determination of charges, billing, and hearing of appeals and petitions. The local agency also will have responsibility for providing staff support for utility implementation

In the event that an agency or department other than the one in which the utility is located is best equipped to undertake a particular task, the local governing agency shall ensure that appropriate interagency charges are determined such that all costs of stormwater management are reflected in the utility budget and that utility charges finance all aspects of stormwater management.

6. With respect to new stormwater management facilities constructed by private developers, the local governing agency shall develop criteria for use in determining whether these will be maintained by the utility or by the facility owner. Such criteria may include whether the facility has been designed primarily to serve residential users and whether it has been designed primarily for

purposes of stormwater management. In situations where it is determined that public maintenance is not preferable, standards shall be developed to ensure that inspection of facilities occurs annually and that facilities are maintained as needed.

7. The use of charges is limited to those purposes for which the utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance of the stormwater system; billing and administration; and water quantity and water quality management, including monitoring, surveillance, private maintenance inspection, construction inspection, and other activities which are reasonably required.

Section 8 -Permit Plan Application and Approval Process

1. After July 1, 1991, unless a particular activity is exempted by these regulations, a person may not disturb land without an approved sediment and stormwater management plan from the appropriate plan approval agency. A grading or building permit may not be issued for a property unless a sediment and stormwater management plan has been approved that is consistent with the following items:

A. Chapter 40, Title 7, Delaware Code, relating to erosion and sediment control and stormwater management, and;

B. These regulations, or duly adopted county or municipal ordinances that are adopted as a part of the delegation process and relate to the intent of these regulations.

2. A sediment and stormwater management plan or an application for a waiver shall be submitted to the appropriate plan approval agency by the developer for review and approval for a land disturbing activity, unless otherwise exempted. The sediment and stormwater management plan shall contain supporting computations, drawings, and sufficient information describing the manner, location, and type of measures in which stormwater runoff will be managed from the entire development. The appropriate plan approval agency shall review the plan to determine compliance with the requirements of these regulations prior to approval. The approved sediment and stormwater management plan shall serve as the basis for water quantity and water quality control on all subsequent construction.

3. The sediment and stormwater management plan shall not be considered approved without the inclusion of an approval stamp with signature and date, on the plans by the appropriate plan approval agency.

4. All sediment and stormwater management plans submitted for approval shall contain certification by the owner or developer that clearing, grading, construction, or development will be accomplished pursuant to the plan and that responsible personnel involved in the land disturbance will have a Certification of Training at a Departmental

sponsored or approved training program for the control of erosion and sediment control before initiation of the project. The Certification of Training for responsible personnel requirement may be waived by the appropriate plan approval agency on any project involving silviculture or fewer than four residential homes.

5. All sediment and stormwater management plans shall contain certification by the owner or developer of the right of the Department or delegated inspection agency to conduct on-site inspections.

6. A grading or building permit issued by a local jurisdiction may be suspended or revoked after written notice is given to the permittee by the responsible delegated agency or the Department for any of the following reasons:

A. Violations of the conditions of the sediment and stormwater management plan approval;

B. Changes in site runoff characteristics upon which a waiver was granted;

C. Construction not in accordance with the approved plans;

D. Noncompliance with correction notice or stop work order issued for the construction of the sediment control practices or the stormwater management facilities;

E. An immediate danger exists in a downstream area in the opinion of the appropriate plan approval or inspection agency, or the Department; or

F. Failure to submit stormwater management "As Built or Record Document" plans, when required, at the completion of the project.

7. Approved plans remain valid for 3 years from the date of an approval, unless specifically extended or renewed by the appropriate plan approval agency. The basis for extension or renewal may include, but not limited to, the following items:

A. Failure to initiate the approved project for reasons acceptable to the appropriate plan approval agency such as funding or other agency permit delays; or

B. Time duration for a type of activity that typically exceeds three years.

8. Projects which have been approved prior to July 1, 1991, and where site clearing has not been initiated on the project within two years, shall be resubmitted to the appropriate plan approval agency for review and approval subject to the requirements of these regulations.

9. Upon receipt of a completed application for sediment and stormwater management, the appropriate plan approval agency shall accomplish its review within 30 calendar days, and have either the approval or review comments transmitted to the applicant. If that 30 day time frame cannot be met, the appropriate plan approval agency shall notify the applicant of the reasons for delay, and an expected time frame not to exceed an additional 30 days, when that review will be accomplished.

Section 9 - Criteria for Designated Watersheds

The concept of designated watersheds is intended, not only to prevent existing water quantity and water quality problems from getting worse, but also to reduce existing flooding problems and to improve existing water quality or meet State Water Quality Standards in selected watersheds. Criteria is established for designated watersheds and that criteria will depend on whether the specific problems of the watershed are water quantity or water quality oriented. Water quantity and water quality concerns will be considered in all designated watersheds, but the overall emphasis for each designated watershed will depend on its existing and anticipated problems.

1. To initiate consideration of a watershed for Designated Watershed or Subwatershed status, a watershed shall be recommended by a Conservation District, county, municipality, or State agency, to the Department. Upon recommendation to the Department, all involved agencies at the local level will be contacted and their input received prior to any watershed study being initiated.

2. Included with the recommendation of a watershed for Designated Watershed or Subwatershed status to the Department shall be an identification of the specific problems that exist in the watershed so that the pursuit of a watershed study is warranted. Inclusion in these regulations as a Designated Watershed or Subwatershed requires approval by the Department that a significant water quantity or water quality problem exists that would necessitate this joint State, District, and local government involvement. Also, inclusion of a watershed as a Designated Watershed or Subwatershed will necessitate a public hearing process. The process of problem identification shall be based on the following information:

A. To initiate a watershed study based on water quality considerations the following information must be submitted:

(1) Existing water quality data that has been collected as a result of the overall statewide water quality inventory process, or

(2) Other water quality data collected through specific sampling that was accomplished in the watershed, or

(3) Submission of a water quality assessment that was accomplished using a qualitative collection method of benthic macroinvertebrates.

B. To initiate a watershed study based on flooding or water quantity considerations the following information must be submitted:

(1) Estimated annual flood damage to either private, residential, commercial, industrial, or public properties, or

(2) Number of residences or industries in the floodplain, or

(3) The history of flooding in the watershed,

or

(4) Measures already taken to minimize or reduce flooding, or

(5) Dangers to public health and welfare.

3. Upon modification of these regulations to include a watershed as a Designated Watershed or Subwatershed an advisory group will be established that will guide the overall watershed study. The advisory group will be appointed by the Secretary and will include State, District, and local representatives in addition to representatives of the regulated community and others affected by the results of the study.

4. The general components contained in the actual watershed studies shall be the following items:

A. Stormwater quantity or water quality problem identification,

B. The overall needs of the watershed including the additional impacts of new development activities,

C. Alternative approaches to address the existing and future problems,

D. A selected approach that includes the overall costs and benefits,

E. Schedule for implementation,

F. Funding sources that are available for the actual implementation of study recommendations, and

G. A public hearing process prior to final Departmental approval.

5. The following goals are to be obtained through the implementation of the Designated Watershed or Subwatershed program:

A. Reduction of existing flooding or water quality impacts,

B. Prevention of future flooding or water quality impacts, and

C. Minimization of economic and social losses.

6. Specific plan components of a water quality watershed study shall include, but not be limited to, the following items:

A. The limits of the watershed,

B. An inventory of existing water quality data,

C. An inventory of areas having significant natural resource value as defined in existing State or local studies as they may be impacted by the construction or location of stormwater control structures,

D. An inventory of areas of historical and archaeological value identified in existing State or local studies as they may be impacted by the construction or location of stormwater control structures,

E. A map or series of maps of the watershed showing the following information:

(1) watershed topography,

(2) Significant geologic formations,

(3) Soils information,

(4) Existing land use based on existing zoning,

(5) Proposed land use based on expected

zoning or comprehensive plans,

(6) Location of tidal and nontidal wetlands, and

(7) Locations where water quality data were obtained.

F. An evaluation of water quantity concerns so that flooding does not become a problem in the watershed.

7. Specific components of a water quantity based study shall include, but not be limited to, the following items:

A. The limits of the watershed,

B. An inventory of historic flood damage sites, including frequency and damage estimates,

C. An inventory of areas of significant natural resource value as noted in existing State and local studies as they may be impacted by the construction or location of stormwater control structures,

D. An inventory of areas of historical and archaeological value identified in existing State and local studies as they may be impacted by the construction or location of stormwater control structures,

E. A map or series of maps of the watershed showing the following information:

(1) watershed topography,

(2) Soils information,

(3) Existing land use based on existing zoning,

(4) Proposed land use based on expected zoning or comprehensive plans,

(5) Locations of tidal and nontidal wetlands,

(6) Locations of existing flooding problems including floor and corner elevations of structures already impacted, and

(7) 100 year floodplain delineations, water surface profiles, and storm hydrographs at selected watershed location.

F. An evaluation of water quality concerns so that water quality degradation does not become a problem in the watershed.

8. The initiation of studies for Designated Watersheds or Subwatersheds depends on the availability of funding for the study. Once a watershed has been designated, the Department will make every effort to secure funding through federal, State, or local means.

9. The Department is designated as the agency responsible for administering designated watershed or subwatershed studies with the advice of the advisory group appointed by the Secretary. Recommendations based on the results of the watershed study will only be made with the overall consent of the advisory group.

10. The formal results of the Designated Watershed or Subwatershed study will require formal acceptance by the local Conservation District Board of Supervisors and the local governing body of the appropriate county or

municipality.

11. Implementation of the results of the Designated Watershed or Subwatershed study will necessitate the development and implementation of a dedicated funding source such as a stormwater utility to ensure design, construction, and maintenance of needed structures is accomplished.

12. Those watersheds or subwatersheds designated due to existing water quantity or water quality problems include the following:

A. Dover/Silver Lake/St. Jones River and all drainage areas upstream of the Silver Lake dam.

Section 10 - Specific Design Criteria and Minimum Standards and Specifications

1. General submission requirements for all projects requiring sediment and stormwater management approval include the following information:

A. A standard application form,

B. A vicinity map indicating north arrow, scale, and other information necessary to locate the property or tax parcel,

C. A plan at an appropriate scale accompanied by a design report and indicating at least:

(1) Name and address of:

(a) The owner of the property where the project is proposed;

(b) The land developer; and

(c) The applicant.

(2) The existing and proposed topography, as required on a case by case basis.

(3) The proposed grading and earth disturbance including:

(a) Surface area involved; and

(b) Limits of grading including limitation of mass clearing and grading whenever possible.

(4) Stormwater management and stormwater drainage computations, including:

(a) Pre- and post-development velocities, peak rates of discharge, and inflow and outflow hydrographs of stormwater runoff at all existing and proposed points of discharge from the site,

(b) Site conditions around points of all surface water discharge including vegetation and method of flow conveyance from the land disturbing activity, and

(c) Design details for structural controls.

(5) Erosion, sediment control, and stormwater management provisions including:

(a) Provisions to preserve top soil and limit disturbance;

(b) Details of site grading, and;

(c) Design details for structural controls which includes diversions and swales.

D. Federal Emergency Management Agency flood

maps and federal and State protected wetlands, where appropriate.

E. The appropriate plan approval agency shall require that plans and design reports be sealed by a qualified design professional that the plans have been designed in accordance with approved sediment and stormwater ordinances, regulations, standards and criteria. The appropriate plan approval agency may waive this requirement on a case by case basis.

F. Additional information necessary for a complete project review may be required by the appropriate plan approval agency as deemed appropriate. This additional information may include items such as public sewers, water lines, septic fields, wells, etc.

2. Specific requirements for the erosion and sediment control portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before that modification may be applied and that modification shall be subject to public review and comment prior to adoption.

A. All plans shall include details of temporary and permanent stabilization measures including placement of the following statement on all plans submitted for approval. Following soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within 14 calendar days as to the surface of all perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site.

These requirements do not apply to those areas which are shown on the plan and are currently being used for material storage, or for those areas on which actual earth moving activities are currently being performed.

B. All ~~erosion and sediment control~~ plans shall ~~comply with~~ be consistent with the standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, ~~dated 1989~~ and approved supplements. The supplements shall be subject to public review and comment prior to their incorporation in the Erosion and Sediment Control Handbook.

C. A sequence of construction shall be contained on all plans describing the relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The sequence of construction shall, at a minimum, include the following activities:

(1) Clearing and grubbing for those areas necessary for installation of perimeter controls;

(2) Construction of perimeter controls;

(3) Remaining clearing and grubbing;

(4) Road grading;

(5) Grading for the remainder of the site;

(6) Utility installation and whether stormdrains will be used or blocked until after completion of construction;

(7) Final grading, landscaping, or stabilization; and

(8) Removal of sediment controls.

D. The plans shall contain a description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local Conservation District.

E. Unless an exception is approved on a case by case basis or an exception is approved for a specific type of activity by the appropriate plan approval agency, not more than 20 acres may be cleared at any one time. Once grading is initiated in one 20 acre section, a second 20 acre section may have stumps, roots, brush, and organic material removed. This will necessitate the phasing of construction on sites in excess of 20 acres to minimize areas exposed of ground cover and reduce erosion rates. Grading of the second 20 acre section may not proceed until temporary or permanent stabilization of the first 20 acre section is accomplished.

3. Specific requirements for the permanent stormwater management portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before the modification may be applied and the modification for a type of project shall be subject to public review and comment.

A. It is the overall goal of the Department to ~~address~~ utilize stormwater management on a ~~watershed by watershed basis to provide a cost effective water quantity and water quality solution to the specific watershed problems as a means to minimize water quantity and water quality impacts due to land disturbing activities and to mimic pre-development hydrology, to the maximum extent practicable, in regards to the rate, volume and duration of flow.~~ These regulations will provide general design requirements that must be adhered to in the absence of Designated Watershed or Subwatershed specific criteria.

B. All hydrologic computations shall be accomplished using the methodologies from the most recent U.S.D.A. Soil Conservation Service Natural Resources Conservation Service Technical Releases 20 or 55, or other methods as approved by the Department. The storm duration for computational purposes shall be the 24 hour rainfall event. For projects south of the Chesapeake and Delaware Canal, the Delmarva Unit Hydrograph shall be incorporated into the design procedure.

C. Stormwater management requirements for a

specific project shall be based on the entire area to be developed, or if phased, the initial submittal shall control that area proposed in the initial phase and establish a procedure and obligation for total site control.

D. Water quantity control is an integral component of overall stormwater management. Control of peak discharges will, to some extent, prevent increases in flooding. The following design criteria for peak flow control is established for water quantity control purposes, unless a waiver is granted based on a case-by-case basis:

(1) Projects in New Castle County that are located north of the Chesapeake and Delaware Canal shall not exceed the post-development peak discharge for the 2, 10, and 100 year frequency storm events at the pre-development peak discharge rates for the 2, 10, and 100 year frequency storm events.

(2) Projects in New Castle County that are located south of the Chesapeake and Delaware Canal, Kent County, and Sussex County shall not exceed the post-development peak discharge for the 2 and 10 year frequency storm events at the pre-development peak discharge rates for the 2 and 10 year frequency storm events.

(3) Watersheds, other than Designated Watersheds or Subwatersheds, that have well documented water quantity problems may have more stringent, or modified, design criteria that is responsive to the specific needs of that watershed. Modified criteria for that watershed must receive Departmental approval, and all projects reviewed and approved by the appropriate plan approval agency shall meet or exceed the modified criteria. Proposed modification of criteria for a watershed shall be subject to public review and comment prior to implementation.

E. Water quality control is also an integral component of stormwater management. Control of ~~water quality runoff from small, frequent rainfall events~~ on-site will ~~prevent~~ minimize further degradation of downstream water quality and habitat. The following design criteria is are established for water quality protection unless a waiver or variance is granted on a case-by-case basis.

(1) In general, the preferred option for water quality protection shall be ~~ponds~~ those practices collectively referred to as "Green Technology BMP's". ~~Ponds having a permanent pool of water must be considered before a pond having no permanent pool. Infiltration~~ Other practices shall be considered only after ~~ponds preferred practices~~ have been eliminated for engineering or hardship reasons as approved by the appropriate plan approval agency.

(2) ~~Water quality ponds having a permanent pool shall be designed to release the first 1/2 inch of runoff from the site over a 24 hour period. The storage volume of the normal pool shall be designed to accommodate, at least, 1/2 inch of runoff from the entire site. Water quality practices shall be designed to manage the rate and volume of flow from the 2.0" NRCS Type II rainfall event, up to a~~

maximum of 1.0" of runoff.

~~(3) Water quality ponds, not having a normal pool, shall be designed to release the first inch of runoff from the site over a 24 hour period. Alternative stormwater quality practices may be acceptable to the Department and/ or the plan approval agency if the removal efficiency for suspended solids meets or exceeds 80% as demonstrated by scientifically independent evaluation and monitoring performance data.~~

~~(4) Infiltration practices, when used, shall be designed to accept, at least, the first inch of runoff from all streets, roadways, and parking lots. The Department and/or the plan approval agency may require other acceptable stormwater quality practices if a receiving waterbody has been identified as impaired, or designated with a specific pollutant reduction target necessary to meet State of Delaware water quality regulations.~~

~~(5) Other practices may be acceptable to the appropriate plan approval agency if they achieve an equivalent removal efficiency of 80% for suspended solids. Water quality practices may also be acceptable to the Department and/or the plan approval agency if they are designed to reduce pollutant loading from a specific post-development source. The Department and/or the plan approval agency will determine if this criterion for water quality Best Management Practices is appropriate.~~

~~(6) The Department will develop policy and maintain documentation related to the performance of water quality practices. The Department will also provide guidance for the design, appropriate use and required maintenance of water quality practices. These shall include structural and non-structural practices in addition to source reduction management strategies.~~

~~(7) The Department and/or the plan approval agency will review the specific water quality practices proposed in a Sediment and Stormwater Management Plan, and review, approve or deny approval of the plan based on the criteria specified in Section E. of these regulations.~~

F. All ponds that are constructed for stormwater management shall be designed and constructed in accordance with the U.S.D.A. Soil Conservation Service Small Pond Code 378, dated September, 1990, as approved for use in Delaware.

G. Any pond utilized for water supply purposes, or for irrigation, must obtain approval from the Department for that use pursuant to Chapter 60.

H. Where ponds are the proposed method of control, the developer shall submit to the approving agency, when required, an analysis of the impacts of stormwater flows downstream in the watershed for the 100 year frequency storm event.

The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed

development, with and without the pond, on downstream dams, highways, structures, or natural points of constricted streamflows past which the timing effects would be considered negligible. The results of the analysis will determine the need to modify the pond design or to eliminate the pond requirement. Lacking a clearly defined downstream point of constriction, the downstream impacts shall be established, with the concurrence of the approving agency, downstream of a tributary of the following size:

(1) The first downstream tributary whose drainage area equals or exceeds the contributing area to the pond; or

(2) The first downstream tributary whose peak discharge exceeds the largest designed release rate of the pond.

I. Where existing wetlands are intended as a component of an overall stormwater management system, the following criteria shall be adhered to:

(1) The only disturbance to the wetland, for the purposes of these regulations, shall be that disturbance caused by the stormwater management pond embankment placement and construction; or

(2) The applicant can demonstrate that the intended or functional aspects of the stormwater management facility and wetlands are maintained or enhanced, or the construction in the wetland for stormwater management is the only reasonable alternative.

(3) All other necessary State and federal permits can be obtained.

J. Designs shall be in accordance with standards developed or approved by the Department, which are subject to public review and comment.

K. Ease of maintenance must be considered as a site design component. Access to the stormwater management structure must be provided for in the design, and land area adjacent to the structure must be set aside for disposal of sediments removed from the structure when maintenance is performed. The land set aside for pond maintenance shall be sized as follows:

(1) The set aside area shall accommodate at least 2% of the stormwater management basin volume to the elevation of the 2 year storage volume elevation;

(2) The maximum depth of the set aside volume shall be one foot;

(3) The slope of the set aside area shall not exceed 5%; and

(4) The area and slope of the set aside area may be modified if an alternative area or method of disposal is approved by the appropriate plan approval agency.

L. A clear statement of defined maintenance responsibility shall be established during the plan review and approval process.

M. All ponds shall have a forebay or other design feature to act as a sediment trap. A reverse slope bench must

be provided one foot above the normal pool elevation for safety purposes and all embankment ponds, having a normal pool, shall have a drain installed to facilitate maintenance.

N. The use of infiltration practices for the disposal of stormwater runoff is classified by the USEPA as an underground injection control practice, class V injection well. The appropriate plan approval agency shall forward a copy of all such approvals and the results of all construction inspections to the Department's Underground Injection Control program manager.

O. Infiltration practices have certain limitations on their use on certain sites. These limitations include the following items:

(1) Areas draining to these practices must be stabilized and vegetative filters established prior to runoff entering the system. Infiltration practices shall not be used if a suspended solids filter system does not accompany the practice. If vegetation is the intended filter, there shall be, at least, a 20 foot length of vegetative filter prior to stormwater runoff entering the infiltration practice;

(2) The bottom of the infiltration practice shall be at least three feet above the seasonal high water table, whether perched or regional, determined by direct piezometer measurements which can be demonstrated to be representative of the maximum height of the water table on an annual basis during years of normal precipitation, or by the depth in the soil at which mottling first occurs;

(3) The infiltration practice shall be designed to completely drain of water within 48 hours.

(4) Soils must have adequate permeability to allow water to infiltrate. Infiltration practices are limited to soils having an infiltration rate of at least 1.02 inches per hour.

Initial consideration will be based on a review of the appropriate soil survey, and the survey may serve as a basis for rejection. On-site soil borings and textural classifications must be accomplished to verify the actual site and seasonal high water table conditions when infiltration is to be utilized.

(5) Infiltration practices greater than three feet deep shall be located at least 20 feet from basement walls;

(6) Infiltration practices designed to handle runoff from impervious parking areas shall be a minimum of 150 feet from any public or private water supply well;

(7) The design of an infiltration practice shall provide an overflow system with measures to provide a non-erosive velocity of flow along its length and at the outfall; and

(8) The slope of the bottom of the infiltration practice shall not exceed five percent. Also, the practice shall not be installed in fill material as piping along the fill/natural ground interface may cause slope failure.

(9) Unless allowed on a specific project, infiltration practices will be used primarily for water quality

enhancement only.

(10) An infiltration practice shall not be installed on or atop a slope whose natural angle of incline exceeds 20%.

P. A regional approach to stormwater management is an acceptable alternative to site specific requirements. As a substitute control practice, regional stormwater management structures shall be required to meet the following items:

(1) They shall have a contributory drainage area not in excess of 400 acres unless, on a case by case basis, a larger drainage area is approved by the appropriate plan approval agency;

(2) They shall have a permanent pool of water and provide for 24 hour detention of the first inch of stormwater runoff from the entire upstream watershed; and

(3) All other necessary approvals have been obtained that could be cause for site rejection.

Q. The pre-development peak discharge rate shall be computed assuming that all land uses in the site to be developed are in good hydrologic condition.

Section 11 - ~~General Permit~~ Standard Plan Criteria

1. ~~A general permit involves completion and submission of a form~~ Approval under this section involves submission of a standard plan by a land owner, developer, or agent to the appropriate plan approval agency ~~for signature~~. The minimum criteria for the ~~form~~ standard plan will be developed by the Department, and may be expanded upon by the appropriate plan approval agency. The ~~form~~ standard plan will contain standard conditions for erosion and sediment control that must be implemented on sites where a ~~specific control~~ detailed plan is not required. The appropriate plan approval agency shall approve or deny ~~general permit standard plan~~ requests within ~~5~~ 14 calendar days of receipt.

2. The inclusion of an activity into the ~~general permit standard plan~~ classification does not relinquish that activity from the requirements of Chapter 40. Rather, the ~~general permit standard plan~~ precludes that activity from the necessity of a ~~specific~~ detailed plan review for each individual project.

3. Approval of a ~~general permit standard plan~~ does not relieve the applicant from the conditions that are a part of the ~~general permit standard plan~~ approval regarding the implementation of control practices as required by the ~~general permit standard plan~~. Failure to implement control practices pursuant to conditions included in the general permit standard plan may necessitate appropriate enforcement action as provided in Chapter 40 and these regulations.

4. Those activities eligible for ~~general permits standard plans~~ include the following, when the stormwater management requirements have been waived in accordance with Section 3 of these Regulations:

A. Individual detached residential home or agricultural structure construction where the disturbed area for construction will be less than one acre in size. Two or more contiguous lots being developed concurrently by the same land developer will not be eligible for the general permit standard plan.

B. ~~Forest harvest operations.~~ Highway shoulder and side swale maintenance.

C. The repair, maintenance, and installation of above and underground utilities.

D. Minor Commercial, Institutional, and industrial projects where the total disturbed area will be less than one acre.

E. Modification or reconstruction of a tax ditch by a tax ditch organization when that tax ditch is not intended to serve new development, and which will not increase water quantity or adversely impact water quality, or change points of discharge so as to adversely affect the waters of the State.

5. The appropriate plan approval agency may place more restrictive conditions upon the ~~general permits standard plan~~ approval including the requirement for ~~site specific detailed plans~~ for any ~~general permits standard plan~~ category. The imposition of more specific requirements for categories of projects shall be approved by the Department, and shall be subject to public review and comment prior to their imposition.

Section 12 - Certified Construction Reviewer Requirements

1. Projects reviewed and approved by the Department for sediment control and stormwater management, in general, shall have a certified construction reviewer when the disturbed area of the project is in excess of 50 acres. In addition any project, regardless of its size, may be required by the Department, or the appropriate plan approval agency, to have a certified construction reviewer on a case by case basis.

2. The Department or the appropriate inspection agency may require that any project, already under construction, have on site a certified construction reviewer if, on that project, significant sediment control or stormwater management problems necessitate more frequent inspections.

3. The certified construction reviewer shall function under the direction of a registered professional engineer licensed to practice engineering in the State of Delaware.

4. Individuals designated as certified construction reviewers shall attend and pass a Departmental sponsored or approved construction review training course. The course content will contain, at a minimum, information regarding the following items:

A. Basic hydrology and hydraulics;

B. Soils information including texture, limitations, erodibility, and classifications;

C. Types of vegetation, growing times, and suitability;

D. Erosion, sediment control, and stormwater management practices;

E. Inspection and problem referral procedures;

F. Aspects of State law, regulations, local ordinances, and approval procedures: and

G. Sediment and stormwater management plan content.

5. The time frame for certification shall not exceed five years unless extended by the Department.

6. The responsibility of the certified construction reviewer will be to ensure the adequacy of construction pursuant to the approved sediment and stormwater management plan.

7. The certified construction reviewer shall be responsible for the following items:

A. Provision of a construction review of active construction sites on at least a weekly basis;

B. Within five calendar days, informing the person engaged in the land disturbing activity, and the contractor, by a written construction review report of any violations of the approved plan or inadequacies of the plan. The plan approval agency shall be informed, if the approved plan is inadequate, within five working days. In addition, the appropriate construction review agency shall receive copies of all construction review reports; and

C. Referral of the project through the delegated inspection agency to the Department for appropriate enforcement action if the person engaged in the land disturbing activity fails to address the items contained in the written construction review report. Verbal notice shall be made to the Department within two working days and written notice shall be provided to the Department within five working days.

8. If the Secretary or his designee determines that a certified construction reviewer is not providing adequate site control or is not referring problem situations to the Department, the Secretary or his designee may suspend or revoke the certification of the construction reviewer.

9. In any situation where a certified construction reviewer's approval is being suspended or revoked, an opportunity for hearing before the Secretary or his designee shall be provided. During any suspension or revocation, the certified construction reviewer shall not be allowed to provide construction reviews pursuant to these regulations. The minimum time of suspension or revocation shall be 6 months.

Section 13 - Contractor Certification Program

1. The Department shall require certification of responsible personnel for any foreman or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated

with a construction project. Responsible personnel are not required on any project involving silvaculture or fewer than four residential homes. Responsible personnel shall obtain certification by completing a Department sponsored or approved training program. Enrollment of existing and future responsible personnel is the responsibility of employers. Response to a Department notice of training and certification in accordance with the provisions of item 3 of this section shall serve as an application for training. The Department shall notify employers of responsible personnel as to the date and location of training programs for attendance by responsible personnel and other interested persons.

2. After July 1, 1991, any applicant seeking sediment and stormwater plan approval shall certify to the appropriate plan approval agency that all responsible personnel involved in the construction project will have a certificate of attendance at a Departmental sponsored or approved training course for the control of sediment and stormwater before initiation of any land disturbing activity. The certificate of attendance shall be valid until the Department notifies the individual or announces in local newspapers that recertification is required due to a change in course content.

3. After July 1, 1991, employers of responsible personnel may receive interim certification for responsible personnel during the period before attendance at a Departmental sponsored or approved training course by submitting an enrollment form to the Department. Interim certification shall be valid until the scheduled date of attendance for training of responsible personnel. These enrollment forms are available from the Department and the Conservation Districts.

Section 14 - Construction Review and Enforcement Requirements

1. The land developer shall request, at least 24 hours ahead of time, that the appropriate inspection agency approve work completed at the stages of construction outlined in the sequence of construction contained on the approved plans. Any portion of the work which does not comply will be promptly corrected by the developer after written notice by the appropriate inspection agency. The notice shall set forth the nature of corrections required and the time frame within which corrections must be made.

2. The land developer shall notify the appropriate inspection agency before initiation of construction and upon project completion when a final inspection will be conducted to ensure compliance with the approved sediment and stormwater management plan.

3. The responsible inspection agency shall, for inspection purposes, do all of the following items:

A. Ensure that the approved sediment and stormwater management plans are on the project site and are complied with;

B. Ensure that every active site is inspected for compliance with the approved plan on a regular basis;

C. Prepare and leave on site, or forward to the contractor, a written report after every inspection that describes:

(1) The date and location of the site inspection;

(2) Whether the approved plan has been properly implemented and maintained;

(3) Approved plan or practice deficiencies; and

(4) The action taken.

D. Notification of on-site personnel or the owner/developer in writing when violations are observed, describing the:

(1) Nature of the violation;

(2) Required corrective action; and

(3) Time period for violation correction.

4. The Department may investigate complaints or refer any complaint received to the local inspection agency if the activity is located in a jurisdiction that has received delegation of sediment and stormwater management inspection. In conjunction with a referral, the Department may also initiate an on-site investigation after notification of the local inspection agency in order to properly evaluate the complaint. The Department shall take enforcement action when appropriate, and notify the local inspection agency in a timely manner of any enforcement actions taken.

5. The Department, at its discretion and upon notification to either the owner, developer, or contractor, may visit any site to determine the adequacy of sediment and stormwater management practices. In the event that the Department conducts site inspections, the appropriate inspection agency shall be notified prior to the initiation of any enforcement action. The appropriate inspection agency shall establish a time frame to obtain site compliance. This notification shall, in no way limit the right to the Department to take action subsequent to any provision of these regulations or Chapter. Formal procedures for interaction between the Department and the appropriate inspection agency on site inspection and referral will be developed on an individual basis.

6. The appropriate plan approval agency may require a revision to the approved plans as necessary due to differing site conditions. The appropriate plan approval agency shall establish guidelines to facilitate the processing of revised plans where field conditions necessitate plan modification. Where changes to the approved plan are necessary those changes shall be in accordance to the following:

A. Major changes to approved sediment and stormwater management plans, such as the addition or deletion of a sediment basin, shall be submitted by the owner/developer to the appropriate plan approval agency for review and approval.

B. Minor changes to sediment and stormwater management plans may be made in the field if approved by the construction reviewer and documented in the field review report. The appropriate inspection agency shall develop a list of allowable field modifications for use by the construction reviewer.

7. Stormwater management construction shall have inspections accomplished at the following stages:

A. Infiltration practices shall be inspected at the commencement, during, and upon completion of construction;

B. All ponds shall be inspected at the following stages:

(1) Upon completion of excavation to sub-foundation and where required, installation of structural supports or reinforcement for structures, including, but not limited to;

(a) Core trenches for structural embankments,

(b) Inlet-outlet structures and anti-seep structures, watertight connectors on pipes, and

(c) Trenches for enclosed storm drainage facilities.

(2) During placement of structural fill, concrete, and installation of piping and catch basins;

(3) During backfill of foundations and trenches;

(4) During embankment construction; and

(5) Upon completion of final grading and establishment of permanent vegetation.

8. The agency responsible for construction review may, in addition to local enforcement options, refer a site violation to the Department for additional enforcement action.

9. Referral of a site violation to the Department may initiate a Departmental construction review of the site to verify site conditions. That construction review may result in the following actions:

A. Notification through appropriate means to the person engaged in a land disturbing activity and the contractor to comply with the approved plan within a specified time frame; and

B. Notification of plan inadequacy, with a time frame for the person engaged in a land disturbing activity to submit a revised sediment and stormwater plan to the appropriate plan approval agency and to receive its approval with respect thereto.

The Department shall notify the local inspection agency in a timely manner of what enforcement action is taken on the site.

10. Failure of the person engaged in the land disturbing activity or the contractor to comply with Departmental requirements may result in the following actions in addition to other penalties as provided in Chapter 40.

A. The Department shall have the power to issue a cease and desist order to any person violating any provision of Chapter 40 and these regulations by ordering such person to cease and desist from any site work activity other than those actions necessary to achieve compliance with any administrative order.

B. The Department may request that the appropriate plan approval agency refrain from issuing any further building or grading permits to the person having outstanding violations until those violations have been remedied.

Section 15 - Maintenance Requirements

1. For erosion and sediment control, all practices shall be maintained in accordance with requirements specified in the Delaware Sediment and Erosion Control Handbook dated 1989 or as directed by the construction reviewer.

2. Prior to the issuance of any building or grading permit for which stormwater management is required, the responsible plan approval agency shall require the applicant or owner to execute an inspection and maintenance agreement binding on all subsequent owners of land served by the private stormwater management facility. Such agreement shall provide for access to the facility at reasonable times for regular inspection by an inspection agency and for an assessment of property owners to ensure that the stormwater management structure is maintained in proper design working condition.

3. The Department encourages, and will provide technical assistance to, any Conservation District or local jurisdiction who chooses to assume the maintenance responsibility for stormwater management structures on, at least, residential lands. Public maintenance provides a reasonable assurance that maintenance will be accomplished on a regular basis.

4. The owner or person responsible shall perform or cause to be performed preventive maintenance of all completed stormwater management practices to ensure proper functioning. The responsible inspection agency shall ensure preventive maintenance through inspection of all stormwater management practices. The inspections shall occur at least once each year.

5. Inspection reports shall be maintained by the responsible inspection agency on all detention and retention structures and those inspection reports shall include the following items:

A. The date of inspection;

B. The name of the inspector;

C. The condition of:

(1) Vegetation,

(2) Fences,

(3) Spillways,

(4) Embankments,

(5) Reservoir area,

- (6) Outlet channels,
- (7) Underground drainage,
- (8) Sediment load, or
- (9) Other items which could effect the proper

function of the structure.

D. Description of needed maintenance.

6. Responsible inspection agencies shall provide procedures to ensure that deficiencies indicated by inspections are rectified. The procedures shall include the following:

A. Notification to the person responsible for maintenance of deficiencies including a time frame for repairs;

B. Subsequent inspection to ensure completion of repairs; and

C. Effective enforcement procedures or procedures to refer projects to the Department if repairs are not undertaken or are not done properly.

Section 16 - Penalties

1. Any person who violates any rule, order, condition imposed in an approved plan or other provision of these regulations shall be fined not less than \$200 or more than \$2,000 for each offense. Each day that the violation continues shall constitute a separate offense. The Justice of the Peace Courts shall have jurisdiction of offenses brought under this subsection.

2. Any person who intentionally, knowingly, and after written notice to comply, violates or refuses to comply with any notice issued pursuant to these regulations shall be fined not less than \$500 or more than \$10,000 for each offense. Each day the violation continues shall constitute a separate offense. The Superior Court shall have jurisdiction of offenses brought under this subsection.

Section 17 - Hearings

The conduct of all hearings conducted pursuant to these regulations shall be in accordance with the relevant provisions of Delaware Code, Title 7, Chapter 60.

Section 18 - Severability

If any section, subsection, sentence, clause, phrase, or portion of these regulations are for any reason held invalid or unconstitutional by any court or competent jurisdiction, such provision and such holding shall not affect the validity of the remaining portions of these regulations.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code,
Section 5404(a) (24 **Del.C.** §5404(a))

NOTICE

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 **Del.C.** §5404(a) proposes to amend several rules dealing with Bail Enforcement Agent.

Amend Rule 1.0 - Licensing. This amendment will further protect the public from a Bail Enforcement Agent that may endanger his or her safety while performing their duties.

Amend Rule 4.0 – Firearms Policy. This amendment will require Bail Enforcement Agents to provide proof of firearm training on a yearly basis.

Amend Rule 5.0 – Nightstick, PR24, Mace, Peppergas, Chemical Spray, and Handcuffs. This amendment requires Bail Enforcement Agents to have training by certified instructors to further protect the public from anyone that may endanger his or her safety while in the performance of a Bail Enforcement Agent.

Amend Rule 6.0 – Training. This amendment eliminates the waiver for initial licensing training to be done by January 19, 2003.

If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by March 31, 2004, to Delaware State Police, Detective Licensing, P.O. BOX 430, DOVER, DE, 19903.

Bounty Hunter/Bail Enforcement Agents

Preamble

These Rules & Regulations are promulgated pursuant to 24 Del.C. Section 5504(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 55 to the Division of State Police.

1.0 Licensing

1.1 Any individual applying for a bail enforcement agent ID card under Title 24 Chapter 55 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony; and

1.1.2 Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: theft, drug offenses, offensive touching, or assault III; and

1.1.3 ~~Must not have been convicted of any~~

~~charge that bears a relationship to the performance of the bounty hunter as determined by the Detective Licensing Section; Must not have been convicted of any charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Detective Licensing Section~~ and

1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.

1.2 An individual bail enforcement agent ID card will not be issued if there is a pending charge as listed in Section 1.1.1 or a pending charge as listed in Section 1.1.2 for an applicant with one (1) conviction of specified misdemeanor listed in Section 1.1.2.

1.3 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must also meet the following qualifications:

1.3.1 Must be at least 21 years of age; and

1.3.2 Must complete the training qualifications set forth in Section 6.0; and

1.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 4.0.

1.4 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must submit the following for approval:

1.4.1 A fee of \$25 for a four (4) year ID card which shall expire and be renewable on the 4th anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every 4th year; and

1.4.2 Any and all applications required by the Detective Licensing Section; and

1.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process. This subsection 1.4.3 does not apply to the renewal of ID cards, unless required by the Director of Detective Licensing.

1.5 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon expiration of the ID card or at the request of the Detective Licensing Section.

1.6 A bail enforcement agent that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

1.7 A bail enforcement agent must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

1.8 There will be no reciprocity with any other state regarding the issuing of an ID card to a bail enforcement agent.

2.0 Badges, Patches, Advertisements

2.1 No individual licensed under Title 24 Chapter 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

2.2 All advertisements or other forms of publication, subsequent to their use, are subject to review by the Detective Licensing Section for potential misrepresentation. If the Detective Licensing Section does not approve the advertisement or publication, it will forward its concerns to the licensee. Failure to correct the advertisement or publication will be considered a violation of these Rules & Regulations.

2.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

3.0 Use Of Animals

3.1 The use of animals is prohibited in the performance of any bail enforcement agent activity.

4.0 Firearms Policy

4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.

4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.

4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.

4.3 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:

4.3.1 9mm

4.3.2 .357

4.3.3 .38

4.3.4 .40

4.4.5 .45

4.4 All ammunition will be factory fresh (no re-loads).

4.5 Any person requesting to carry any shotgun, rifle, any type of weapon or apprehension device must first provide proof of training to the Detective Licensing Section for approval.

5.0 Nightstick, PR24, Mace, Peppergas, Chemical Spray, And Handcuffs

5.1 To carry the above weapons/items a bail enforcement agent must have completed training by a Detective Licensing Section approved instructor, on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.

6.0 Training

6.1 All bail enforcement agents licensed under Title 24 Chapter 55 must complete training in the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents.

6.2 ~~This training will be waived for the initial licensing, but must be completed by January 19, 2003. Thereafter, the training must be completed prior to obtaining a license. The training must be completed prior to obtaining a license.~~

7.0 Notification Of Apprehensions

7.1 All bail enforcement agents licensed under Title 24 Chapter 55 are required to notify the police emergency 911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.

8.0 Notification Of Arrest

8.1 Anyone licensed under Title 24 Chapter 55 shall, excluding weekends and State holidays, notify the Detective Licensing Section within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any individual.

9.0 Suspensions And Revocations

9.1 The Detective Licensing Section shall have the power to suspend or revoke any individual, licensed under Title 24 Chapter 55, that violates the Chapter or the promulgated Rules & Regulations.

9.2 The Detective Licensing Section may suspend or revoke any individual, licensed under Title 24 Chapter 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Section 1.0.

9.3 Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of ~~Public Safety~~ the Department of Safety and Homeland Security.

9.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within 30 days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.

See 5 DE Reg. 1523 (1/1/02)

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 ELECTRICAL EXAMINERS
24 DE Admin. Code 1406
Statutory Authority: 24 Delaware Code,
Section 1406(a)(1) (24 Del.C. §1406(a)(1))**

ORDER

A public hearing was held to receive comments on January 6, 2004 at the regularly scheduled meeting of the Board of Electrical Examiners. The Board considered changes to its rules and regulations that were published in the Register of Regulations, Vol. 7, Issue 6, December 1, 2003.

Summary of the Evidence and Information Submitted

No written comments were received. The verbal comments are summarized below.

Robert Smith of First State Inspection Agency had comments to Rules 12.4 and 12.1. He wanted some clarification under Rule 12.4 about whether an inspection agency had the responsibility to check the professional license of the person requesting an inspection.

He also suggested a change to Rule 12.1. The Rule should recognize that at times an application for inspection is

received and the work is not in fact started until after 5 days has passed. An application may say "will call" rather than provide a specific date for the inspection requested. The call for the inspection should trigger the five days rather than the initial application.

Findings of Fact with Respect to the Evidence and Information

1. The representative of the inspection agency must obtain the information provided on the form submitted by the licensee to request an inspection under Rule 12.4. This will provide an investigator with the tools necessary to thoroughly investigate complaints. An employee of the agency is not expected to view the license of the applicant. However, the list of licensees is provided by the Division of Professional Regulation quarterly and they appear on the web page of the Division. An employee of the inspection agency must confirm that a person requesting an inspection is among the currently licensed electricians or a person excepted from licensure as provided in Rule 15.4.

2. The Board believes the wording of the Rules could be improved to clarify that a licensee can file an application for inspection as required under 24 Del.C. §1420(b), but the five days in order to complete the inspection does not begin until there is a request for inspection. The Board will recommend changes to 24 Del.C. §1421(f) which requires an inspection within five days of an application.

3. The changes proposed by the Board in response to public comment are not substantive.

Decision and Effective Date

The Board of Electrical Examiners hereby adopts the Rules and Regulations as proposed to be effective 10 days following final publication in the Register of Regulations.

BOARD OF ELECTRICAL EXAMINERS

Jacob Good, President

Richard Strouse, Vice President

Leroy James

Donald King

John Gordy

James Anderson

Date: February 4, 2004

Text and Citation

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.

1.4 A licensee under this chapter shall perform all electrical services or electrical work in accordance with the standards established in the National Electric Code (NEC) as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the NEC applicable to a particular project is determined by the Delaware Fire Commission.

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 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. 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)

See 6 DE Reg. 1495 (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 homeowner's 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. 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.

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 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.

See 6 DE Reg. 1495 (5/1/03)

12.0 Required Inspection.

12.1 Every licensee shall file ~~[a request an application]~~ 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 perform an]~~ inspection~~s~~ no later than five working days after ~~[the application has been received the inspection has been requested.]~~

12.2 ~~[A request An application]~~ for an inspection shall be filed with the inspection agency on a form, signed by the licensee, or person authorized under Rules 12.7, 12.8, or 12.9, containing at least the following information:

12.2.1 Full names of the licensee and any job foreman

12.2.2 License number, type (T-1, T-2, or Specialty) and expiration date

12.2.3 Date inspection requested

12.2.3 Location of work to be inspected

12.2.4 Permit numbers, if applicable

12.2.5 [Requestor's Applicant's] name and contact information, if other than the licensee

12.2.6 A detailed description of the work to be inspected including any devices or equipment

12.2.7 Signature of the licensee

12.3 A licensee who signs ~~[a request an application]~~ for inspection form is deemed to have authorized and shall be responsible for the work described in the form.

12.4 An inspection agency shall not conduct an inspection of work performed until it has received a request made in compliance with Rule 12.2.

12.5 An inspection agency is responsible to ~~[insure ensure]~~ that the standards for its inspection are those established in the National Electric Code as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the Code applicable to a

particular project is determined by the Delaware Fire Commission.

12.6 An inspection report shall be recorded legibly on a form containing at least the following information:

12.6.1 Full name of the licensee

12.6.2 License number, type (T-1, T-2, or Specialty) and expiration date

12.6.3 Location of work to be inspected

12.6.4 Permit numbers

12.6.5 Inspector's full name

12.6.6 A detailed description of the work inspected

12.6.7 Deficiencies noted, any applicable NEC section, and inspection dates

12.6.8 Signature of inspector

12.6.9 Date inspection completed.

~~12.2~~ 12.7 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~~ 12.8 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~~ 12.9 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection as provided in Rule 12.0 by an inspection agency licensed by the Board.

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 homeowner's 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.

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.

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

See 6 DE Reg. 1495 (5/1/03)

15.6 An inspection agency shall notify the Board in writing within 10 days when an employee leaves the agency or when a new employee is hired by the agency. This notification shall include the full name and address of the inspector. The date a new employee is hired by an inspection agency marks the beginning of the period in which the inspection examinations in Rule 15.3 must be successfully completed.

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 professional's 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
BOARD OF EXAMINERS OF PRIVATE
INVESTIGATORS AND PRIVATE SECURITY
AGENCIES**

24 DE Admin. Code 1300

**Statutory Authority: 24 Delaware Code,
Section 1304(b)(3) (24 Del.C. §1304(b)(3))**

ORDER

Pursuant to the Guidelines in 29 Del.C. §10118 (a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this order. Following notice and a public hearing held on January 29, 2004 on the proposed amendment of promulgated rules and regulations 1.0 Firearms Policy, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed amendment.
2. The Board expressed its desire to amend the rule to correct the license expiration date to coincide with the Law.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the amendment of the rule. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the amendment of this rule will correct the license expiration date to coincide with the Law.
5. The Board finds that the amendment of this rule will give a full 2 years of licensure to each new agency at the time of approval.
6. The Board finds that the amendment will have no adverse impact on the public.
7. The Board finds that the amendment is well written and describes its intent to amend the rule to correct the license expiration date to coincide with the Law.

Conclusion

8. The proposed rule amendment was promulgated by the Board in accord with the statutory duties and authority as set forth in 24 Del.C. §1304 et seq. and, in particular, 24 Del.C. §1304 (b) (3) .
9. The Board deems this amendment necessary and expedient to the full and official performance of its duties under 24 Del.C. §1304 et. seq.

10. The Board concludes that the amendment of this rule will be in the best interests of the citizens of the State of Delaware.

11. The Board therefore adopts the amendment of this rule pursuant to 24 Del.C. §1304 (b) (3) and guidelines of 29 Del.C. §10118 of the Administrative Procedures Act. See, *Strauss v. Silverman*, Del. Supr., 399 A.2d 192 (1979).

12. This amended rule replaces 1.0(1.7), in its entirety, any former rule or regulation heretofore promulgated by the Board.

13. The effective date of this Order shall be February 23, 2004.

14. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 29th day of January, 2004.

Colonel L. Aaron Chaffinch, Chairman

APPROVED AS TO FORM:
Ralph K. Durstein, III, Esquire
Deputy Attorney General
January 29, 2004

1.0 Firearm's Policy

1.1 No person licensed under **24 Del.C. 1315 & 1317** shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

1.2 Firearms - approved type of weapons

- 1.2.1 9mm
- 1.2.2 .357
- 1.2.3 .38
- 1.2.4 .40

1.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

1.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

1.5 All individuals must qualify with the same type of weapon that he/she will carry.

1.6 All ammunition will be factory fresh (no re-loads).

1.7 The minimum passing score is 75%. ~~All licenses are valid for a period of one (1) year.~~

1.8 All licenses are valid for a period of five (5) years, subject to proof of compliance of Rule 1.0 by submission of

shoot sheets by January 31st of each year for the previous calendar year.

Adopted 11/04/1994

See 3 DE Reg. 960 (1/1/00)

2.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Director of the Board of Examiners. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

Adopted 11/04/1994

3.0 Personnel Rosters and Job Assignments

3.1 Anyone licensed under **24 Del.C. Ch. 13** shall submit an alphabetical personnel roster and a job site list to the director of the Detective Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith	01/25/60W	M	01/25/99	SG
Helen E. White	03/17/71B	F	03/17/00	FA
John F. Henry	05/23/43B	M	05/23/00	PI
James D. Williams	12/03/40W	M	06/30/99	MG
Frank G. Montgomery	07/24/55BM		06/30/99	LH
Anne L. Murray	10/20/40W	F	06/30/99	CO
SG	Security Guard			
FA	Firearm's			
PI	Private Investigator			
MG	Delaware Manager			
LH	License Holder			
CO	Corporate Officer			

3.2 Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry
Barley Mill Road

2200 - 0600 Hours, Monday, Wednesday, and

Friday

Adopted 11/04/1994

See 3 DE Reg. 960 (1/1/00)

4.0 Record Book; Right of Inspection

All persons licensed under **24 Del.C. Ch.13** shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number

of the weapon/item, if applicable.

Adopted 11/04/1994

See 3 DE Reg. 960 (1/1/00)

5.0 Uniforms, Patches, Badges, Seals, Vehicular Markings Amended 04/17/97

5.1 No person licensed under **24 Del.C. Ch. 13** shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

5.2 Advertisement and other forms of publications:

5.2.1 No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

5.2.2 All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

5.2.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

Adopted 11/04/1994

See 3 DE Reg. 960 (1/1/00)

6.0 Qualified Manager

A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

Adopted 11/04/1994

7.0 Employment Notification

7.1 It shall be the responsibility of each person licensed as a security guard under **24 Del.C. Ch. 13** to notify the Director of the Board of Examiners, in writing within 24 hours, if such person is terminated or leaves one agency for employment with another or works for more than one security guard agency. Under no circumstances will a security guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers

must be made aware of this fact as well as the Director of the Board of Examiners.)

7.2 Employers Responsibility

7.2.1 A licensed private security agency, after investigation, shall notify the Detective Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

7.2.2 A licensed private security agency shall report to the Detective Licensing Office, in writing, the following:

7.2.2.1 The name of any employee arrested;

7.2.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

7.2.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

Adopted 11/04/1994

See 4 DE Reg. 361 (8/1/00)

8.0 Criminal Offenses

In addition to those qualifications set forth in **24 Del.C. §1314**, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or Offensive Touching misdemeanor within the last three (3) years.

Adopted 11/04/1994

9.0 Private Investigators

9.1 A Private Investigator must not be a member or employee of any Law Enforcement Organization, as defined by the Council on Police Training.

9.2 At the time of processing, a Private Investigator must provide proof of employment by a licensed Private Investigative Agency with the Private Investigator application signed by the employer. The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

9.3 A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

Adopted 11/04/1994

10.0 Licensing Fees

10.1 Class A License - Private Investigative Agency

10.1.1 In-State License Holder

10.1.1.1 Individual - No Employees - Not Corporation

10.1.1.1.1	\$230 for 2 years to expire	Corporation	10.3.1.1.1	\$345 for 2 years to expire	
June 30th of odd years			June 30th of odd years		
10.1.1.1.2	\$5,000 Bond		10.3.1.1.2	\$10,000 Bond	
10.1.1.1.3	\$1,000,000	Liability	10.3.1.1.3	\$1,000,000	Liability
Insurance per occurrence			Insurance per occurrence		
10.1.1.2 Corporation - Has Employees			10.3.1.2 Corporation - Has Employees		
10.1.1.2.1	\$345 for 2 years to expire		10.3.1.2.1	\$520 for 2 years to expire	
June 30th of odd years			June 30th of odd years		
10.1.1.2.2	\$10,000 Bond		10.3.1.2.2	\$15,000 Bond	
10.1.1.2.3	\$1,000,000	Liability	10.3.1.2.3	\$1,000,000	Liability
Insurance per occurrence			Insurance per occurrence		
10.1.2 Out-of-State			10.3.2 Out-of-State		
10.1.2.1 License Holder - Individual and Corporation			10.3.2.1 Individual and Corporation		
10.1.2.1.1	\$345 for 2 years to expire		10.3.2.1.1 License Holder		
June 30th of odd years			10.3.2.1.1.1	\$520 for 2 years to expire	
10.1.2.1.2	\$10,000 Bond		expire June 30th of odd years		
10.1.2.1.3	\$1,000,000	Liability	10.3.2.1.1.2	\$15,000 Bond	
Insurance per occurrence			10.3.2.1.1.3	\$1,000,000	Liability
10.1.2.2 Delaware Manager			Insurance per occurrence		
10.1.2.2.1	\$230 for 2 years to expire		10.3.2.1.2 Delaware Manager		
June 30th of odd years			10.3.2.1.2.1	\$345 for 2 years to expire	
10.1.2.2.2	\$5,000 Bond		expire June 30th of odd years		
10.2 Class B License - Private Security Agency			10.3.2.1.2.2	\$10,000 Bond	
10.2.1 In-State License Holder			10.4 Class D License - Armored Car Agency License		
10.2.1.1 Individual - No Employees - Not Corporation			10.4.1 License Holder		
10.2.1.1.1	\$230 for 2 years to expire		10.4.1.1	\$345 for 2 years to expire	June 30th of odd years
June 30th of odd years			10.4.1.2	Banking Commissioner License as required by 5 Del.C. 3203	
10.2.1.1.2	\$5,000 Bond		10.4.1.3	\$10,000 Bond	
10.2.1.1.3	\$1,000,000	Liability	10.4.1.4	\$1,000,000	Liability
Insurance per occurrence			occurrence.		
10.2.1.2 Corporation - Has Employees			10.4.2 Delaware Manager		
10.2.1.2.1	\$345 for 2 years to expire		10.4.2.1	\$230 for 2 years to expire	on June 30 th of odd years.
June 30th of odd years			10.4.2.2	\$5000 Bond	
10.2.1.2.2	\$10,000 Bond		10.5	<u>All license will expire 2 years from the last day of the month they are approved for licensure.</u>	
10.2.1.2.3	\$1,000,000	Liability		See 6 DE Reg. 637 (11/01/02)	
Insurance per occurrence				See 7 DE Reg. (3/1/04)	
10.2.2 Out-of-State			11.0 Use Of Animals		
10.2.2.1 License Holder - Individual and Corporation			The use of animals is prohibited in the performance of private security activities.		
10.2.2.1.1	\$345 for 2 years to expire		Adopted 04/23/1998		
June 30th of odd years			See 3 DE Reg 960 (1/1/00)		
10.2.2.1.2	\$10,000 Bond				
10.2.2.1.3	\$1,000,000	Liability			
Insurance per occurrence					
10.2.2.2 Delaware Manager					
10.2.2.2.1	\$230 for 2 years to expire				
June 30th of odd years					
10.2.2.2.2	\$5000 Bond				
10.3 Class C License - Private Investigative & Private Security Agency					
10.3.1 In-State License Holder					
10.3.1.1 Individual - No Employees - Not					

DEPARTMENT OF EDUCATION

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

Regulatory Implementing Order

220 Diversity

I. Summary Of The Evidence And Information Submitted

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

Notice of the proposed regulation was published in the News Journal and the Delaware State News on December 17, 2003, in the form hereto attached as *Exhibit "A"*. Comments received from the Governors Advisory Council for Exceptional Citizens and the State Council for persons with Disabilities endorsed the amended regulation.

II. Findings Of Facts

The Secretary finds that it is appropriate to amend this regulation in order to up date the language and remove the reference to the State Board of Education.

III. Decision To Amend The Regulation

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

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §220 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on February 4, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

IT IS SO ORDERED the 4th day of February 2004.

DEPARTMENT OF EDUCATION
 Valerie A. Woodruff, Secretary of Education

220 Diversity

1.0 Definition:

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

2.0 Each school district shall:

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

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

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

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

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

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

2.7 Enact measures to avoid and address inequitable

and prejudicial behaviors among employees and students.

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

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

Regulatory Implementing Order

225 Prohibition of Discrimination

I. Summary Of The Evidence And Information Submitted

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

Notice of the proposed regulation was published in the News Journal and the Delaware State News on December 17, 2004, in the form hereto attached as *Exhibit "A"*. Comments received from the Governors Advisory Council for Exceptional Citizens and the State Council for persons with Disabilities endorsed the amended regulation.

II. Findings Of Facts

The Secretary finds that it is appropriate to amend this regulation in order to add the word age and to remove the reference to the State Board of Education.

III. Decision To Amend The Regulation

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

IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation

shall be cited as 14 DE Admin. Code §225 in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on February 4, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

IT IS SO ORDERED the 4th day of February 2004.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

225 Prohibition of Discrimination

1.0 No person in the State of Delaware, shall, on the basis of race, color, creed, national origin, disability, age or gender, be unlawfully excluded from participation in, ~~be~~ denied the benefits of, or ~~be~~ subjected to discrimination under any program or activity receiving approval or financial assistance from or through ~~the Delaware State Board of Education and/or~~ the Delaware Department of Education.

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

Regulatory Implementing Order

235 Teacher of the Year Award

I. Summary Of The Evidence And Information Submitted

The Secretary of Education intends to amend regulation 235 Teacher of the Year Award. The amendments to sections 1.0 and 2.0 are necessary to align the regulation with current practice Changes were made to 2.1 to incorporate the involvement of the charter schools and 2.1.1 was substituted for the existing 2.2 in order to make it clear that "Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified."

Notice of the proposed regulation was published in the News Journal and the Delaware State News on December 17, 2003, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to incorporate the involvement of the charter schools and to substitute 2.1.1 for the existing 2.2 in order to make it clear that "Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified."

III. Decision to Amend the Regulation

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

IV. Text And Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code §235 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on February 4, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the **Delaware Register of Regulations**.

IT IS SO ORDERED the 4th day of February 2004.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

235 Teacher of the Year Award

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

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

intermittently, for an accumulative period of three years or more previous to the date of such person's nomination; shall have been formally nominated; and be actively teaching in this state at the time of nomination. A nominee shall have met all the requirements for a Standard Certificate for the position held, as approved by the Professional Standards Board, [Department of Education] and the State Board of Education.

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

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

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

2.1.1 ~~Nominees shall be skillful and dedicated teachers, pre-kindergarten through grade 12. Administrative personnel such as principals and guidance counselors are not eligible to be considered for State Teacher of the Year. Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified.]~~

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

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

~~[2.3 2.2] 2.5 Each district Nominees shall submit a portfolio describing the nominee themselves and setting forth his or her their positions on educational issues. Format will be based on that of the National Teacher of the Year program.~~

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

consideration by judges.

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

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

~~[2.4 2.3] Following the submission of the portfolios, selected Department of Education staff members and selected former state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year Nomination Information Document that is updated each year. Another group of Department of Education Staff members ~~[are shall be]~~ assigned to read all of the portfolios and rate them based on forms found in the Teacher of the Year Nomination Information Document. Based on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.~~

~~[2.5 2.4] The panel of judges shall include: the current State Teacher of the Year; the President of the State Congress of Parents and Teachers; the President of the State Student Council Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.~~

~~[2.6-2.5] The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.~~

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

DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Educational Impact Analysis Pursuant to
14 Del.C. Section 122 (D)

120 Required Inservice Training Activities for Delaware Public School Administrators

A. Type Of Regulatory Action Requested
Repeal

B. Synopsis Of Subject Matter Of Regulation
The Professional Standards Board in cooperation and

collaboration with the Department of Education seeks the approval of the State Board of Education to repeal regulation 120 Required Inservice Training Activities for Delaware Public School Administrators. This regulation concerns the requirement for administrators to successfully complete 15 hours of professional development annually. It is necessary to repeal this regulation as the subject is regulated by regulation 1511 Issuance and Renewal of Continuing License, which is in compliance with 14 Del. C. § 1211 and § 1213. Regulation 120 is, therefore, no longer necessary.

C. Impact Criteria

1. Will the repeal of the regulation help improve student achievement as measured against state achievement standards? The repealed regulation concerns professional development for educators, not student achievement.

2. Will the repeal of the regulation help ensure that all students receive an equitable education? The repealed regulation concerns professional development for educators, not equitable education for students.

3. Will the repeal of the regulation help to ensure that all students' health and safety are adequately protected? The repealed regulation concerns professional development for educators, not students' health and safety.

4. Will the repeal of the regulation help to ensure that all students' legal rights are respected? The repealed regulation addresses educator professional development, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the regulation to be repealed rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the repeal of regulation? The repeal of the regulation is designed to reduce the burden placed on school districts.

10. What is the cost to the state and to the local school boards of compliance with the repeal of the regulation? There will be no cost to the state or to local school boards resulting from the repeal of the regulation.

120 Required Inservice Training Activities for Delaware Public School Administrators

~~1.0 All administrators responsible for the supervision, management and evaluation of instruction shall complete a minimum of 15 clock hours of staff development between July 1 and June 30 of each year, beginning July 1, 1988. The purpose for this staff development program is to assist new administrators to obtain and veteran administrators to maintain skills in and knowledge of effective teaching, staff supervision and evaluation, and building management.~~

~~1.1 Persons newly appointed to administrative positions responsible for the supervision, management and evaluation of instruction and who do not have backgrounds in or experience with effective teaching and/or training in the use of the Delaware Performance Appraisal System shall contact the Department of Education to make arrangements to receive training in these two areas.~~

~~1.1.1 Such training may be provided by a local school district or through DOE and shall include a minimum of 15 clock hours in effective teaching and 15 clock hours in the use of the Delaware Performance Appraisal System.~~

~~1.1.2 These hours shall count toward the minimum 15 clock hour requirement.~~

~~1.2 School districts shall maintain written records of each administrator's participation in staff development programs. Once an administrator has accumulated a total of forty-five clock hours of training, but no less than a minimum of fifteen clock hours in any one year, the district superintendent shall forward a signed copy of that administrator's record on a form approved by the Department to the Department of Education. A certificate will then be sent to the district superintendent to be awarded to the administrator along with the verification of three inservice credits by the Department of Education. An administrator may then begin accumulating another forty-five clock hours of training realizing that no previous training is to be repeated if credit is desired. Cumulative records for each administrator will be kept by the Department of Education.~~

~~1.3 Department of Education staff who are responsible for the supervision, management and evaluation of~~

~~instruction shall complete a minimum of 15 clock hours of staff development between July 1 and June 30 of each year.~~

~~1.4 Administrators at the local or state level, not responsible for the supervision, management and evaluation of instruction may, but are not required to, complete the minimum of 15 clock hours of staff development each year.~~

~~1.5 A variety of programs will be available to administrators for meeting the required hours of staff development. Options include:~~

~~1.5.1 Delaware Principal's Academy programs in management, evaluation and effective instruction.~~

~~1.5.2 Workshops for administrators sponsored by the Department of Education and/or school districts in management, evaluation and effective instruction.~~

~~1.5.3 Special programs and institutes co-sponsored by the University of Delaware and the Department of Education in management, evaluation and effective instruction.~~

~~1.5.4 Graduate level college courses in management and evaluation.~~

~~1.5.5 Programs related to management and evaluation which are offered by state or national educational or professional organizations.~~

~~1.5.6 Workshops, seminars, and institutes provided by institutions or organizations from the public or private sector in management or evaluation.~~

PROFESSIONAL STANDARDS BOARD

Regulatory Implementing Order

Regulation 1510 Issuance Of Initial License

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulation 1510 Issuance of Initial License. This regulation applies to the issuance an initial license as established by 14 Del.C. §1210. The amendment to this regulation is necessary to define and clarify the forms of PRAXIS I tests which are acceptable in applying the composite score, set forth procedures for the suspension of a license for failure to pass PRAXIS I, and define two years of college or technical training as applied to trade and industry teachers. The amendment also clarifies that an individual under investigation by another state will not be issued a license until there is a favorable resolution to the investigative proceeding.

Notice of the proposed amendment of the regulation

was published in the News Journal and the Delaware State News on November 26, 2003, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** §1510 in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5TH DAY of FEBRUARY, 2004

Harold Roberts, Chair
Sharon Brittingham
Heath Chasanov
Patricia Clements
Edward Czerwinski
Karen Gordon
Barbara Grogg
Bruce Harter

Leslie Holden
Carla Lawson
Mary Mirabeau
John Pallace
Karen Schilling Ross
Carol Vukelich
Geraldine A. Williams

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED this 19th day of February, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1510 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 appropriate to the instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

"Composite Score" means a total of an applicant's scores on all three (3) subtests of PRAXIS I which is equal to, or greater than, the sum of the passing scores on the three subtests. Scores from either the PRAXIS I (PPST) paper and pencil test and/or from the PRAXIS I (CPPST) computerized test may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT) may be used when applying the composite score provision, but may not be used in conjunction with scores from the PRAXIS I (PPST) paper and pencil test and/or with the PRAXIS I (CPPST) computerized test.

"Date of Hire" means the effective date of employment by a school district, charter school, or other employing authority.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 **Del.C.**, Ch[~~apter~~] 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 **Del.C.** §1203, but does not include substitute teachers.

"Examination of 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, expiration of a license during the school year, 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.

“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.

“Mentoring” means activities prescribed by the Department and/or other employing authority in which a holder of an initial license must engage during the three-year term of the initial license.

“Novice Applicant” means an applicant who has not previously held an initial license in Delaware.

“PRAXIS I or “PPST” means a test from Educational Testing Service of general knowledge in reading, writing, and mathematics.

“PRAXIS I CBT” means the discontinued PRAXIS I computer based test from Educational Testing Service taken between November 1993 and December 2001, with a possible score range of 300 to 335. Scores from the PRAXIS I CBT test may not be combined with scores from the PRAXIS I paper and pencil test or the PRAXIS I computerized test (CPPST) to derive a composite score.

“PRAXIS I CPPST” means the PRAXIS I computerized test from Educational Testing Service which began in January 2002. This test, which is delivered in a computer format, has a possible score range of 150 to 190. Scores from the CPPST and the PRAXIS I (PPST) paper and pencil test may be combined for a composite scores.

“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 [traditional student teaching] placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience within the last year consisting of a minimum of 91 days of long term teaching experience at one assignment during which regular evaluations were conducted, evidencing at least satisfactory performance.

“Suspension” means the temporary removal of an initial license for failure to pass the PRAXIS I test.

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 bachelor's degree from a regionally accredited 4-year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment 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. For the purposes of this regulation, a bachelor's degree for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. An initial license shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of teaching experience 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 [completed] application form, official transcripts, and official scores on an examination of general knowledge, such as the PRAXIS I tests in any format, as defined in 2.0, 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 (PPST) 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 (PPST) taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

3.2.2.1.2 PRAXIS I (PPST)- Paper and Pencil Tests (Tests and thereafter[}), with a possible score range of 150 to 190.[}) and PRAXIS I eComputerized Pre-professional Skills Tests taken 1/1/02 and thereafter, both of which have a possible score range of 150 to 190, with passing scores of: reading - 175, mathematics -

174, writing - 173.

3.2.2.1.3 PRAXIS I - Computer Based Tests (CBT) (Tests taken ~~on~~ between 10/23/93 and thereafter 12/31/01), with passing scores of: 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 the three PRAXIS I (PPST) tests in any format or

an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year.

[3.2.6.1.1 Evidence of passage of PRAXIS I within the time period of the suspension shall result in the reinstatement of the initial license.

3.2.6.1.[1 2] If proof of passage of PRAXIS I is not provided by the end of the next consecutive fiscal year, the initial license shall be suspended for a maximum of two years.

3.2.6.1.[2 3] Suspension.

3.2.6.1.[2 3]1 An applicant who does not pass PRAXIS I during the time period of the suspension, and whose initial license is expired, must reapply and may be issued an initial license, valid for three years, if he/she meets the requirements for initial licensure then in effect.

3.2.6.1.[2 3].2 Notwithstanding the foregoing, the superintendent of the employing school district or charter school or other employing authority may submit to the Secretary of Education a written request for a one-year extension. The request must document the effectiveness of the applicant.

3.2.6.1.[3 4].1 Composite Score.

3.2.[56].1.[3 4].1 Scores from either the paper and pencil PRAXIS I (PPST) test and/or from the computerized PRAXIS I (CPPST) test, begun in January, 2002, both of which have a possible score range of 159 to 190, may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT), taken between November, 1993 and December 31, 2001 may be used when applying the composite score provision, but may not be used in conjunction with the paper and pencil PRAXIS I test and/or with the computerized PRAXIS I (CPPST) test.

3.2.6.1.[34].2 ~~3.2.6.1.1~~ An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. ~~Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language arts must meet the passing score in that content area.~~

3.2.[56].1.[34].3 ~~Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content area of mathematics must meet the current state passing score for the PRAXIS I mathematics test. An applicant who seeks to teach in the secondary content area of English/language arts must meet the current state passing score for the PRAXIS I reading and writing tests.~~

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.

[3.3 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

3.3.1 "Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.]

3.~~3~~4] Trades and Industry Teacher Experience Requirements.

[3.4.1 ~~3-3-1~~] A bachelor's degree equivalent for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. The requirement for two (2) years of college or technical training may be satisfied through the satisfactory completion of the requirements for any one or an appropriate combination of the following experiences in the area to be taught equaling:

[3.4.1.1 ~~3-3-1-1~~] An associate's degree with a major in the specific occupational area to be taught; or

[3.4.1.2 ~~3-3-1-2~~] Two years of college majoring in the specific occupational area to be taught with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; or

[3.4.1.3 ~~3-3-1-3~~] A state-issued certificate indicating completion of apprenticeship hours and

apprentice-related training (e.g. journey papers); or

[3.4.1.4 ~~3-3-1-4~~] Four years of sequential Delaware Trade Extension courses; or

[3.4.1.5 ~~3-3-1-5~~] Four years of National Center for Construction Education and Research's *Contren* documented training; or

[3.4.1.6 ~~3-3-1-6~~] Nine high school credits of career and technical high school training; or

[3.4.1.7 ~~3-3-1-7~~] Passage of the State of Delaware Licensing test, offered through the Division of Professional Regulation; or

[3.4.1.8 ~~3-3-1-8~~] 576 hours of military training;
or

[3.4.1.9 ~~3-3-1-9~~] 576 hours postsecondary trade school training; or

[3.4.1.10 ~~3-3-1-10~~] Completing the written and performance teacher testing for the National Occupational Competency Testing Institute with a minimum score set by the Department; or

[3.4.1.11 ~~3-3-1-11~~] DOE approved equivalents.

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 An initial license issued to an applicant who is not currently employed by a school district, charter school, or other employing authority shall be inactive until such time as an applicant is employed by a public school district or charter school. Once employed, the initial license shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the vocational and trade industry areas which shall expire on the last day of the month of issuance six (6) years later.

4.2 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 or other employing authority 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.

6.1 A license holder whose license expires during the school year may have the initial license extended until the

last day of the fiscal year upon a request from the district superintendent, charter school administrator, or other employing authority. This extension shall be considered an exigent circumstance[s] and shall not exceed one (1) year in length.

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 August 31, 2003, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of a 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~~1~~ Educators employed on a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 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 or Temporary Certificate be valid after July 1, 2008.

10.0 The Secretary of Education may, at the request of the superintendent of a local school district or charter school administrator or other employing authority, review licensure credentials on an individual basis and grant a license to an applicant who otherwise does not meet the requirements for initial license, but whose effectiveness is documented by the local school district, charter school, or other employing authority.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION**
Statutory Authority: 16 Delaware Code,
Section 1101 (16 **Del.C.** §1101)

ORDER

Regulations For Training Of Paid Feeding Assistants

Nature of the Proceedings

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with **29 Delaware Code**, Chapter 101 to adopt Regulations For Training of Paid Feeding Assistants. These regulations supplement and implement the federal final rule on Requirements for Paid Feeding Assistants in Long Term Care Facilities published by the Centers for Medicare and Medicaid Services in the Federal Register on September 26, 2003.

On January 1, 2004, the Department of Health and Social Services, Division of Long Term Care Residents Protection published proposed regulations in the Register of Regulations and received written and verbal comments at public hearings on February 3 and February 4, 2004. Upon review of the comments received, DLTCRP has revised four sections of the regulations which will be the subject of a further public hearing. The regulations being revised and withheld from publication as final regulations are 73.201 and 73.203A. Additionally, new sentences have been added to 73.104 and to the Introduction. The revised proposed regulations and the hearing notice appear elsewhere in this edition of the Register.

The remaining proposed regulations are attached and are being promulgated as final regulations. A discussion of the comments received which were not incorporated into the 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 Training of Paid Feeding Assistants are adopted effective March 10, 2004.

Vincent P. Meconi, Secretary
Department of Health and Social Services, 2/13/04

Summary of Evidence

Comments on the proposed regulations have been received and evaluated as follows:

Two comments suggested the posting of names of all Feeding Assistants or of those Feeding Assistants hired solely for that purpose. DLTCRP has followed the federal regulation which does not require posting the names of Feeding Assistants. However, Section 73.204 of the regulations requires recordkeeping by the facility of those

Feeding Assistants hired solely to assist with nutrition and hydration and those Feeding Assistants who perform additional paid tasks in the facility.

DLTCRP received comments calling for the regulations to require that Feeding Assistants undergo criminal background checks. Requirements for criminal background checks and Adult Abuse Registry checks for all facility staff are statutory.

A commenter proposed that the regulations include Feeding Assistant ratios. The scope of responsibilities for a Feeding Assistant may range from simply cuing a group of residents who are able to eat independently to providing complete assistance to one resident who is unable to feed himself or herself at all. Therefore, ratios are not appropriate.

One commenter noted that the regulations do not require continuing education for Feeding Assistants. Current orientations and facility in-services should be sufficient to maintain competency given the limited scope of Feeding Assistants' responsibilities.

One comment assumed that Feeding Assistants would be transporting residents and should be trained to do so. The regulations specify that facilities shall ensure that Feeding Assistants are limited in the scope of their duties to providing nutrition and hydration unless they have been trained to provide other services.

A commenter suggested that approval for the use of Feeding Assistants by facilities should be deferred while a demonstration project is conducted for at least one year. Full implementation of the use of Feeding Assistants now can have a positive impact on nutrition and hydration issues currently existing in some nursing homes. Delaying full implementation could result in more negative outcomes in these areas.

A suggestion was received that clear outcome measures should be established for such quality of care indicators as malnutrition, dehydration, aspiration pneumonia and staffing levels. All those outcome measures as well as many others are currently in place.

A comment suggested that Feeding Assistants be required to demonstrate competency by passing both a written and skills test. Competency will be evaluated by facilities in programs approved individually by DLTCRP.

Another comment proposed that residents receive feeding assistance only in a facility's dining room. DLTCRP believes that such a limitation would deprive some residents from benefiting from a feeding assistance program. For example, a resident who refuses to go to the dining room may be most in need of encouragement to eat through the social interaction and companionship offered by a Feeding Assistant.

A proposal urged that Feeding Assistants be prohibited in facilities with repeat or serious deficiencies. It is unclear how residents will be helped through penalizing facilities

with deficiencies by prohibiting them from using Feeding Assistants. The intent of using Feeding Assistants is to augment existing staff and improve the services provided to residents. Thus, the residents of a facility with deficiencies may benefit more than the residents of a facility without deficiencies from the additional services provided by Feeding Assistants.

One commenter suggested that enforcement remedies be evaluated if the use of feeding assistants results in deficiencies. The evaluation of enforcement remedies takes place for all deficiencies.

Two commenters urged a requirement that Feeding Assistants wear badges or other identification. That requirement for all facility employees is already in statute.

One comment pointed out that reassessment of residents is not mentioned in the Feeding Assistant regulations. Assessments and reassessments are detailed in other state and federal regulations.

One comment suggested a revision to clarify Section 73.205. The regulation is clear as written.

Another comment calls for orientation should a Feeding Assistant change to a different facility. Orientation requirements are addressed in other currently existing regulations.

A comment point out that assistive devices are mentioned in the competencies, but not in the curriculum. The requirements for curriculum and competencies should be read together to summarize the knowledge and skills that Feeding Assistants are expected to acquire and demonstrate.

73.0 Regulations for Training of Paid Feeding Assistants

Introduction

These regulations allow for the use of Paid Feeding Assistants, as single task workers, to provide feeding assistance in nursing facilities and assisted living facilities. To ensure consistency in the training of Feeding Assistants, the Division of Long Term Care Residents Protection has developed minimum requirements for Feeding Assistant training programs. Each Feeding Assistant training program shall be approved by the Division of Long Term Care Residents Protection. The intent of these regulations is to provide more residents with help in eating and drinking, or encouraging the resident so that more of the meal is consumed, making mealtime a more pleasant experience, and potentially reducing the incidence of unplanned weight loss and dehydration. The determination of which residents may receive assistance from a Feeding Assistant shall be based on the needs and potential risks to a resident as observed and documented in the resident's plan of care and the comprehensive assessment of the resident's functional capacity.

Section 73.100 – Definitions

73.101 Division – The Division of Long Term Care Residents Protection.

73.102 Feeding Assistant – An unlicensed, uncertified person trained to assist residents with nutrition and hydration who has successfully completed an initial training program and has demonstrated competency.

73.103 Feeding Assistant Program - Policies and procedures established by a facility to provide supervision of Feeding Assistants, resident selection criteria, and implementation of Section 73.200 of these regulations.

73.104 Instructors – Registered nurses, advanced practice nurses, dietitians, speech pathologists, or a combination of such professionals, who train Feeding Assistants.

73.105 Resident – A person admitted to a nursing facility or assisted living facility licensed pursuant to 16 Del. C., Chapter 11.

73.106 Student – A person enrolled in an approved Feeding Assistant training program.

73.107 Supervision – Direct oversight by a registered nurse or licensed practical nurse who is in the unit or on the floor where feeding assistance is furnished.

73.108 Supervisory Nurse - The nurse who is responsible for a specific area of a facility such as a floor or unit.

Section 73.200 – General Requirements

~~73.201 Facilities implementing Feeding Assistant Programs shall have policies and procedures in place that include each item in Section 73.200.~~

73.202 Facilities implementing Feeding Assistant Programs shall strictly limit the responsibilities of each Feeding Assistant.

A. The facility shall ensure that each Feeding Assistant performs only those duties for which he/she has been specifically trained.

B. The facility shall ensure that each Feeding Assistant seeks assistance from other members of the resident care team for all resident needs other than nutrition/hydration.

73.203 Each Feeding Assistant employed by any facility either as facility or contract/agency staff shall be required to meet the following:

~~A. Each unlicensed or uncertified individual who feeds and hydrates residents in a facility, with the exception of family members and volunteers, shall complete a Feeding Assistant training program approved by the Division of Long Term Care Residents Protection.~~

B. Feeding Assistants shall be required to successfully complete an approved Feeding Assistant training program before providing nutrition/hydration to residents.

C. A Feeding Assistant may provide nutrition/

hydration to a resident only under the supervision of a registered nurse or licensed practical nurse who is present in the unit or on the floor where the task is performed and is readily available to provide assistance to the Feeding Assistant when needed.

D. A Feeding Assistant may provide nutrition/hydration only for those residents who have been assessed and approved by the supervisory nurse for such assistance. The resident assessment shall be based on the needs of, and potential risks to, the resident as observed and documented in the resident's written plan of care and the latest comprehensive assessment of the resident's functional capacity.

E. A Feeding Assistant shall not feed residents who are assessed to have complicated feeding problems such as recurrent lung aspirations, difficulty swallowing, feeding tubes, parenteral/IV feedings, chronic coughing or choking.

F. The supervisory nurse shall request a physician referral to a speech pathologist for an assessment of a resident served by a Feeding Assistant when indicated, e.g., when there has been a change in the resident's swallowing ability.

73.204 Participating facilities shall maintain records regarding the following:

A. The names of Feeding Assistants hired solely to provide nutrition and hydration.

B. The names of Feeding Assistants performing additional paid tasks in the facility.

C. The names of residents served by the Feeding Assistants.

73.205 The facility shall have policies and procedures in place to assure that Feeding Assistants report and record appropriate observations made while providing nutrition and hydration to nursing staff.

73.206 The resident's record shall have documentation that the resident may be fed by a Feeding Assistant. Examples of such documentation include care plans, minimum data sets, uniform assessment instruments and flow charts.

73.207 The facility shall maintain a list of facility staff qualified to train Feeding Assistants.

73.208 Feeding Assistants shall not be counted toward meeting any minimum staffing requirement.

Section 73.300 – Feeding Assistant Training Program Requirements

73.301 General Training Requirements

A. Each Feeding Assistant training program shall be approved by the Division.

B. To obtain approval, the curriculum content for the Feeding Assistant training programs shall meet each of the following requirements:

1. The program shall be a minimum of 12 hours to include classroom instruction and demonstrated

competency.

2. Classroom instruction and demonstrated competency in each requirement shall be completed prior to students providing resident nutrition/hydration. Programs shall maintain documentation of completion of requirements.

3. At the completion of training, each student who has satisfactorily completed a Feeding Assistant training program shall be provided with documentation of completion of a Delaware Feeding Assistant Program which shall be transferable among facilities with Feeding Assistant programs.

4. The instructor shall directly supervise students at all times while students are demonstrating competency.

5. Programs shall notify the Division in writing when changes to the program or the instructors are made.

73.302 Curriculum Content

A. Feeding Assistant Role and Function

1. On-the-job conduct, appearance, grooming, personal hygiene and ethical behavior.

2. Responsibilities and limitations of a Feeding Assistant.

(a) A Feeding Assistant shall perform only those duties for which he/she has been specifically trained.

(b) A Feeding Assistant shall seek assistance from other members of the resident care team for all resident needs other than nutrition/hydration.

3. Reporting and documenting incidents.

4. Knowledge of the "chain of command" in the facility.

5. Importance of punctuality and commitment to the job.

B. Resident Rights

1. Providing dignity and maintaining confidentiality.

2. Promoting the resident's right to make personal choices to accommodate individual needs.

3. Maintaining care and security of resident's personal possessions.

4. Providing care which ensures that the resident is free from abuse, mistreatment, neglect or financial exploitation.

C. Psychosocial Factors

1. Verbal and non-verbal communication and interpersonal skills with residents, including those with dementia.

2. Religious, ethnic and personal food preferences.

D. Appropriate Responses to Resident Behaviors

1. Identifying behaviors which require assistance from professional staff.

2. Recognizing and reporting changes in residents that are inconsistent with their normal behavior.

3. Distinguishing between normal eating and drinking behaviors and those which need to be reported.

E. Safety and Emergency Procedures

1. Recognizing emergencies which require assistance from other members of the resident care team.

2. Learning appropriate use of the resident call system.

3. Identifying when a resident is choking.

4. Learning how to perform the Heimlich maneuver.

F. Nutrition/Hydration

1. Understanding of therapeutic diets, supplements and dietary restrictions, including consistency restrictions.

2. Understanding of fluid needs and restrictions.

3. Understanding tips to encourage intake.

4. Understanding of food substitution policy.

5. Understanding use of special feeding devices, including use of straws when deemed appropriate and beneficial to a resident.

6. Understanding the components of a healthy diet.

7. Understanding factors that cause higher risk for nutrition and hydration problems.

G. Infection Control

1. Knowledge of proper hand washing and hygiene.

2. Knowledge of disease transmission and infection prevention.

H. Monitoring and Reporting Intake

1. Fluids

(a) Identifying amounts consumed according to facility policy and procedures.

(b) Identifying items that are liquid or classified as liquid.

(c) Recording liquid intake accurately.

2. Foods

(a) Identifying percentage of food consumed according to facility policy and procedure.

(b) Recording amount eaten accurately.

(c) Reporting food-related resident problems.

73.303 Competencies

A. Feeding Techniques

1. Check resident's identification and diet card to ensure that resident has received the correct tray.

2. Provide resident with napkin and clothing protector, as needed.

3. Describe selection and location of foods on tray.

4. Assist resident with food preparation, as

needed.

5. Observe to make sure each mouthful of food is swallowed before more is ingested.

6. Offer liquids at intervals with solid food.

7. Record food and fluid intake separately and accurately.

B. Social/Environmental Factors

1. Encourage resident to eat independently, if appropriate.

2. Provide cuing and prompting during meals as needed.

3. Make pleasant conversation, but refrain from asking questions while the resident has food in his/her mouth or asking questions that require lengthy answers.

4. Never rush the resident while feeding.

5. Sit next to the resident to convey an unhurried feeling.

6. Keep the resident focused on eating. Avoid distractions.

7. Be aware of infection control techniques, including avoidance of blowing on hot food and sharing or sampling resident's meal.

C. Special Needs

1. Use hand on hand to assist resident, as needed.

2. Help resident to grasp eating utensils and beverage containers.

3. Help resident with assistive devices such as plate guards and adaptive eating utensils.

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature Of The Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) as it relates to the Temporary Assistance for Needy Families (TANF) Program. 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 2004 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be

produced by January 31, 2004 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

- Revised definition of unemployable so that DSS can count nursing assistant type duties without pay as work.
- Added vocational rehabilitation, nursing assistant type duties without pay, and, generic language that will permit Bridge Program as work activities.
- Revised TANF supportive services section to reflect that DSS contracted vendors now handles this function.
- Corrected manual language so that the third (3rd) sanction for school attendance is not permanent but curable.
- Corrected discrepancy in the manual on how to determine assistance groups and budget groups for needy non-relative adults who are caring for a minor child.
- Added clarifying language in the Diversion Assistance policy that will assist staff in making determinations.
- Added language to reflect that the Division of Child Support Enforcement (DCSE) cannot accept child support payments unless DCSE has a Delaware order in place.

Summary Of Comments Received With Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC), and the State Council for Persons with Disabilities (SCPD) provided the following observations summarized below:

First, DSS is eliminating from the definition of "unemployable" persons those "caring for a disabled family member". This deletion is a major amendment and no rationale is provided.

Agency Response: In regards to caring for a disabled family member, DSS is going to count caring for a disabled family member as an allowable work activity. This change credits the person and will not result in putting any undo requirements on that person. People caring for a disabled family member WOULD NOT be required to do anything different. This change is in recognition that what they are doing is working.

Second, the interpreter provisions do not explicitly address interpreters for the Deaf. Such assistance should be available.

Agency Response: DSSM 1010 already addresses services for the hearing impaired or deaf. Those services have not changed. DSSM 1009 just updates the service providers by adding another provider. This policy manual revision adds more services.

Third, DSS guarantees child care for children under 13 or 13 + who are physically or mentally incapable of caring for themselves. See §3007.1. It is a form of support service within the purview of §3007. This section could be improved by clarifying types of other support services that might be available for such children particularly since DSS is eliminating caretaker assistance for children with disabilities as a justification for not working.

Agency Response: DSS will consider the suggestion. Currently, home health services and private duty services are specifically covered under other DSS programs and are not part of the supportive services outlined in DSSM 3007.

Fourth, the “diversion assistance” provision is interesting. It contemplates purchase of vehicles for TANF beneficiaries, vehicle repairs, insurance, gas, etc. This concept is strongly endorsed by our Council. There is an expectation of partnering with DVR, particularly in the context of vehicle modification. However, the language (§3032.1.3D) is somewhat confusing. Additionally, we suggest the following numbers be added to contact for further information: the main number for the Division of Vocational Rehabilitation (DVR) as well as the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). Finally, there is a “typo” in the fourth sentence (“we” is not capitalized).

Agency Response: DSS thanks you for your endorsement. Additionally, DSS staff already has the main telephone numbers for DVR and DSAAPD. DSS partners with DVR regularly but DVR staff may not know about the specific program which relates to the diversion program. DSS will review the language of DSSM 3032.1.1 D to ensure its clarity. The “typo” has been corrected.

Findings Of Fact

The Department finds that the proposed changes as set forth in the January 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Temporary Assistance for Needy Families (TANF) Program is adopted and shall be final effective March 10, 2004.

Vincent P. Meconi, Secretary, DHSS, 2/13/04

DSS PROPOSED REGULATION #03-42 REVISIONS:

1009 Procedures for Serving Non-English Speaking Clients

Non-English speaking clients who need an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a bilingual staff person or contracted vendor to translate for the client.

DSS has contracts for translation services with the following:

- EDS (1-800-996-9969 and press Option 8),
- Family and Children Services of Delaware, Inc. (655-6486),
- Cammie Santiago-Hall (410-548-4740 or HARBORRD@aol.com),
- Latin American Community Center (655-7338); and
- Para-Plus Translations, Inc. (1-800-558-3011).

For complete detailed procedures in accessing these services read the most recent administrative notice on translation services.

3001 Definitions

J. PAY AFTER PERFORMANCE - A work experience program is required for families with employable adults where the adult has either not found employment or have lost a job. Families who were continuously on TANF prior to 01/01/2000 will have 24 months before being required to enter into this program. Families applying or reapplying on/or after 01/01/2000 will immediately enter this program. Participants will work to earn TANF benefits.

M. UNEMPLOYABLE - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited ~~either because s/he is caring for a disabled family member or s/he is physically or mentally disabled. The disabled family member can either be living in the home or outside of the home but must be within the 5th degree of relationship to the adult caring for him or her.~~ An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.

The determination and duration of unemployability are made by a health care professional (e.g., doctor, nurse, nurse practitioner, therapist, etc.). Periods of unemployability are not counted toward the cumulative months of benefit eligibility under the time-limited program.

3006.3 TANF Employment and Training Activities

The Division of Social Services, in conjunction with the Delaware Department of Labor and the Delaware Economic

Development Office, has developed employment and training programs to move TANF clients to economic independence self-sufficiency. These agencies will conduct initial and ongoing assessments of client employability and appropriateness of employment and training related activities. For individuals deemed unable to work because s/ he is physically or mentally disabled a referral is to be made to the Division of Vocational Rehabilitation. Use Form 134.

The Division will establish agreements with the Delaware Department of Labor and the Delaware Economic Development Office to employment and training activities.

The goal is to place the adult recipient in an unsubsidized job in as timely a manner as possible. The Department of Labor will have the option of recycling through job search those adult recipients who are unsuccessful in finding work, and/or placing the adult recipient in an alternative work experience, OJT, remediation, or a skills training program. Also, both the Division and the Department of Labor are jointly responsible for the development of an Employability Development Plan.

Although the Department of Labor assumes primary responsibility for assigning adult recipients to employment-related activities for this age group, the Division retains responsibility for ~~supportive services~~, sanctions, federal reporting and other TANF requirements.

3006.4 TANF Employment and Training Activities Which Constitute Participation Under TANF

The following are employment-related activities counting as participation:

- Education, training and job search activities. ~~with the types and length of education, training and job search determined on an individual basis depending on age and other relevant factors; The Eligibility eligibility will be determined by the employment contractors.~~
- Pay-after-performance work experience, with the hours determined by dividing the benefits by the minimum wage, plus up to 10 hours of job search weekly;
- Regular school attendance or appropriate alternative activity (e.g. training or employment) for dependent children and minor parents;
- Job search may be required for applicants and recipients.
- Vocational Rehabilitation program for eligible recipients.
- Nursing or nursing assistant activities performed without pay are considered work experience.
- Other work-related activities that assist in obtaining or maintaining employment or improving work performance.

3007 TANF Supportive Services and Transitional Benefits

The Division will ensure that Supportive Services, ~~such as child care, transportation as required to participate in employment and training activities, and assistance with other work-related expenses (as defined in the State Supportive Services Plan)~~ are available. The Division will ensure the availability of these services, to the extent it determines they are necessary for a recipient to participate. ~~The Division will provide child care in accordance with its Child Care policy as outlined in Section 11000.~~

Currently child care is provided in accordance with child care policy in DSSM 11000. All other supportive services are included and provided by the vendors as specified in the employment contracts.

~~TANF pays a~~ Support services are based on the actual cost of services. The limit is imposed when the cost exceeds the maximum allowed. Participants are not automatically entitled to the maximum cost. Support services are paid or reimbursed to the participant based on the verified actual amount and the participant's need.

3007.1 Child Care

The State IV-A agency must guarantee child care for a dependent child(ren) who resides in the home and who is:

- under 13,
 - or children 13 or and older who is are physically or mentally handicapped incapable of caring for themselves, or under court order requiring adult supervision
 - or active with the Division of Family services.
- ~~and for A~~ child who would be a dependent child except for the receipt of benefits under SSI or foster care payments can receive child care, to the extent that such child care is necessary to permit ~~an~~ a TANF eligible family member to:
- A. accept employment or remain employed; or
 - B. participates in an approved TANF Employment and Training education or training activity (including self-initiated education or training). ~~participate in an approved education or training activity under First Step — TANF (including self-initiated education or training).~~
- Payment may be made or continued when the participant is waiting ~~for entry into employment on an approved education training, or First Step — TANF components for:~~ to begin an approved TANF Employment and Training component for: ~~for entry into employment on an approved education training, or First Step — TANF components for:~~
- A. up to two weeks; or
 - B. up to 30 days if it is verified that the child care arrangement would be lost if payment is not made or continued.

NOTE: Refer to the Child Care Subsidy Manual 11000 for further information.

3007.2 Fees

Fees include purchase of either certificates, licenses or testing needed for education or to obtain employment, such as Commercial Divers License (CDL) or license for nursing assistants, and GED test fees.

A. ~~Basis For Determining Need:~~ Evaluate each education testing or licensing request on an individual basis. Give consideration for jobs where such licenses are necessary for employment or to obtain such employment. Education testing includes GED test fees.

B. ~~Monetary Limit of Service / Expense:~~ Verified actual cost up to \$200.00 per individual for licensing and/or testing per occurrence as determined by need.

3007.3 CWEP Payments

A. ~~CWEP payments include reimbursement to the participant or vendor payment to the provider for the following costs: purchase of lunch, personal grooming aids, clothing, and transportation.~~

~~CWEP payments include reimbursement for purchase of lunch, as well as needed personal grooming aids, in order to enhance participation in CWEP. In addition, payments can be made to help CWEP participants purchase clothes for wear at their community placement sites.~~

~~CWEP activity involves real job situations in a general office environment. For this reason, it is important for participants to look and dress appropriately. Looking and dressing well also adds to feelings of self-worth and can lead to a positive attitude toward work. Payments for lunches, grooming aids and clothing help to support CWEP participants in the performance of their CWEP activities and creates a beneficial atmosphere for CWEP participation.~~

~~CWEP payments may also include transportation expenses. These costs are paid above and beyond the lunch and grooming payments.~~

A. ~~Basis for Determining Need:~~ A participant's ability to afford this expense.

B. ~~Monetary Limit of Service / Expense:~~

1. ~~Verified actual cost up to \$4.00 per day per participant up to \$92.00 per month as determined by need, for lunch and grooming aids. Need is determined by actual attendance at the CWEP site. Verify attendance by receipt of the attendance sheet completed by the CWEP agency and signed by the participant.~~

2. ~~Verified actual cost up to \$150.00 per participant as determined by need, for clothing voucher. This service may be paid one time only.~~

3. ~~Provide bus tokens to cover the expense of public transportation and to reimburse for participant mileage at \$.20 per mile for participants not served by public transportation. The transportation limitation is \$200 per~~

~~month, per individual.~~

~~PROCEDURE: CWEP Check Stop Payments: Use the following procedures to place a stop payment on a CWEP check that is reported by a participant as lost, stolen, or not received at least five days after the mailing date:~~

A. ~~Have the participant sign the Affidavit of Forgery and Request for Replacement of Lost Check or ATP (Form 124) indicating that the CWEP check was not received, or was lost or stolen.~~

B. ~~Complete the Stop Payment or Rescind Payment (Form 230) requesting a stop payment on the CWEP check.~~

C. ~~Forward Form 230 and Form 124 to the Division of Management Services.~~

D. ~~Division of Management Services will mail a replacement check to the recipient four working days after the receipt of the affidavit.~~

~~B. CWEP Over-Payments~~

~~When it is determined that a participant receiving CWEP supportive services was actually ineligible for the service and thus an over-payment took place, forward all pertinent information to the Welfare Fraud Unit. Complete a Notice of Overpayment (Form 940).~~

NOTE: Refer to DSSM 7001, 7003 to 7009 for procedures in such cases.

3007.4 Accessories For Work Or Training

~~These services include purchase of either safety equipment, uniforms, shoes, or tools required to participate in training or work.~~

A. ~~Basis for Determining Need:~~ Evaluate each request on an individual basis. Give consideration for jobs where such safety equipment or tools are required by Office of Safety and Health Administration (OSHA) regulations.

B. ~~Monetary Limit of Service / Expense:~~ Verified actual cost up to \$100.00 per individual, per month as determined by need.

3007.5 Remedial Medical

A. ~~Physical Exam~~

1. ~~Basis for Determining Need:~~ When a participant is required to undergo a physical exam to participate in training or accept employment and such exam is not available through a public health facility or covered by Medicaid.

2. ~~Monetary Limit of Service / Expense:~~ Verified actual cost up to \$100.00 per individual, per month as determined by need.

~~B. Dental Services~~

1. ~~Basis for Determining Need:~~ When a participant's dental condition poses a significant barrier to employment.

2. ~~Monetary Limit of Service / Expense:~~ Verified

~~actual cost up to \$400.00 per individual, per month as determined by need.~~

~~C. Eye exams and eyeglasses~~

~~1. Basis for Determining Need: When the Assessment indicates the individual's vision is impaired, or when the individual indicates difficulty in seeing, or when the individual needs glasses to continue in a component or job.~~

~~2. Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual, per month as determined by need.~~

~~D. Transportation~~

~~Provide bus tokens to cover expense of public transportation and to reimburse for participant mileage at \$.20 / mile for participants not served by public transportation.~~

~~1. Basis for determining need: Participant must live at least 10 blocks from services provided.~~

~~2. Monetary limit of Service / Expense: Verified actual cost up to \$200.00 monthly per individual, as determined by need.~~

3011.1 Employment and Training Requirements

Clients must keep appointments with employment and training staff, cooperate in the development of the Employability Plan, and participate in employment and training activities.

Clients who have secured employment are expected to continue employment unless they have good cause for terminating a job (see Good Cause definition under 3001 Definitions)

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. Since parents with children under age 16 are expected to exert more influence over their children, and since early school attendance is so important in moving children down the path to self-sufficiency, this requirement is grouped with employment and training and work requirements as part of the overall self-sufficiency requirements, which invoke harsher penalties for noncompliance. (See section DSSM 3012 for requirements and sanctions related to cooperation to ensure school attendance by children over the age of 16). A third non-compliance will not result in a permanent but a curable penalty of loss of cash benefits. See DSSM 3011.2.

3011.2 Sanctions for Failing to Comply With Requirements

Self-sufficiency requirements include those related to employment and training, work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

The fiscal sanction for failure without good cause to

meet school attendance requirements for a child under 16, are the same as for other self-sufficiency requirements. This includes teen parents who are dependent children.

The penalty for noncompliance with any of the self-sufficiency requirements will be:

- a) for the first offense, a 1/3 reduction in TANF
- b) for the second offense, a 2/3 reduction in

TANF

- c) for the third offense, a loss of all cash benefits.

The duration of the first and second sanctions will each be two months or until the person complies, whichever is shorter. If, after one month, the person has not complied, DSS will schedule an interview to explain again the participation requirements. If at the end of the two month period there is no demonstrated compliance, the sanction will increase to the next level. If the penalty is related to work non-compliance then the third penalty is permanent loss of benefits, unless the adult is deemed unemployable. Then the case may be reopened for the length of time that the adult is not able to work. If there is a third penalty and it is related to school attendance, it can be cured by the adult caretaker cooperating with school officials to remedy the situation.

The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:

a) for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.

b) for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.

c) for a third offense, a permanent loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months or until the individual obtains a job of equal or higher pay.

3021 Unrelated Children

A needy child (one whose income is less than the GA Standard of Need), who lives with an unrelated adult caretaker, is technically eligible for General Assistance. The caretaker is payee for the child's grant and may be included in the GA budget group unit if he/she is also needy and meets at least one of the conditions specified in DSSM 3019.

In such cases, DSS will document the child's presence in the home and the reason that the child is not living with his/her parents. The possibility of financial support from the parents is also investigated.

In all such cases, the DFS will be notified of the child's placement so a study of the home can be made.

3028 Assistance Units**3028.1 Mandatory Composition of Assistance Units**

EXAMPLE: In GA, establish a separate assistance unit for an unrelated child and the adult caretaker who is also eligible to receive GA on their own. For instance, the adult caretaker is age 55 or older, is needed in the home to care for an unrelated child under age six. There is no other person able to care for the child. Establish two separate GA assistance units; one for the caretaker and one for the child. They may be in separate budget groups. (See DSSM 4001)

3028.2 Optional Composition of Assistance Units

3. In TANF married or unmarried couple cases where each adult has children from previous relationships who are eligible for TANF, they have the option of being in one assistance unit or two separate assistance units. If the unit fails financially, a separate assistance unit may be established for the child(ren) of the previous relationships.

EXAMPLE: A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from the male partner's job makes the family ineligible for TANF. We have the option of placing the female partner and her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married, a step-parent situation would exist. If the couple were not married, eligibility is based solely on the information from the female partner and her child.

8. For children eligible for GA who are living with a non-relative caretaker, include the child. The caretaker may also be included if the child is under six and the caretaker is needy.

EXAMPLE: In GA, establish a separate assistance unit for an unrelated child and the adult caretaker who is also eligible to receive GA because, the adult caretaker is needed in the home to care for an unrelated child under age six and there is no other person able to care for the child. Establish two separate GA assistance units; one for the caretaker and one for the child but keep one budget group. (See DSSM 4001)

3032 Diversion Assistance**3032.1.3 Items/Services Covered:**

A. The Diversion Assistance payment may be used for items and/or services such as but not limited to:

- Transportation (such as vehicle repairs, tires,

insurance, driver's license fee, gas, etc.),

- Clothing such as uniforms or other specialized clothing and footwear or other employment-related apparel,
- Tools and equipment,
- Medical expenses not covered by Medicaid (for example, eye glasses),
- Union dues, special fees, licenses or certificates,
- Up-front costs of employment such as agency fees and testing fees,
- Unpaid child care expenses which, if they remain unpaid, preclude the provision of future child care,
- Relocation expenses for verified employment in another county or state. These expenses may include:
 - Moving equipment rental, gas, and lodging for the days of the move, the first month's rent, rental and utility deposit.

B. If transportation is the issue an expectation is that there is a discussion with the person regarding the cost effectiveness of repairing a vehicle versus purchasing a used vehicle or a new vehicle. We can authorize diversion assistance to be used as a down payment for purchasing a vehicle.

C. If the diversion assistance payment is requested for the down payment on a vehicle several things must be considered in determining if it is approved. DSS will need to determine if the family's income will be enough to meet the regular household expenses such as rent, utilities, and food, as well as the costs involved with owning and maintaining a vehicle. The costs of owning the vehicle include gas to fuel the vehicle, monthly payments, vehicle insurance, and maintenance. Consider that fuel costs can vary based on the price of gas and the amount needed to drive to and from work and other daily life activities when the customer and DSS determines the potential monthly expense.

D. The Division of Vocational Rehabilitation has an Independent Living Program that will assist with home modifications and vehicle modifications. They will not purchase the vehicle. The only requirement is that they are disabled. They operate on a first come first serve basis and maintain a waiting list. If an individual has another agency to assist in the cost sharing they do get served more quickly. If we assisted in the purchase of the vehicle they would consider this a cost share. we would see if we could have the customer purchase an unmodified vehicle and then have DVR help with the modification. Then compare the DVR estimate in determining if the person could still accept or retain the employment with the expected wait for the modification. Call 302-378-5779, if you have a situation for which this program may be beneficial.

Use the following guide to determine if the purchase request is fiscally sound and can be reasonably afforded.

1. Monthly Take Home Pay: \$ _____
- 2a. Basic Living Expenses:
- Mortgage or Rent \$ _____
- Utilities _____
- Food _____
- Clothing _____
- Home/Renter Insurance _____
- Medical Expense _____
- Vehicle Maintenance _____
- Vehicle Insurance _____
- Gas for Vehicle _____
- School Supplies _____
- Household Expenses _____
- Dependent Care Expenses _____
- Other Regular Expenses _____
- 2b. Total Basic Expenses _____
- (copy total into second column)
3. Subtract line 2b from line 1 _____
- (take home pay minus basic expenses)
4. Divide the amount in line 3 by 3 _____
- (money left after basic living expenses ÷ 3)

- Monthly take home pay is the after-tax net income received.
- School supplies include the following: pens, pencils, notebooks, field trips.
- Household expenses include, but are not limited to, the following: cleaning supplies, furniture, laundry cost, napkins, and tissues.
- Utilities include the following expenses: gas and / or electric, heating and cooling, sewer, water, trash disposal and telephone.
- Dependent care expenses are monthly costs for child care, after school care, or adult care.
- Other regular expenses includes all other items for which a regular monthly payment is made such as other credit card purchases, personal entertainment, newspaper delivery or cellular telephone charges.

The money in line 4 is how much can be safely spent on monthly payments each month. This guide is to be used anytime when the diversion request will result in the person making monthly payments to complete the purchase.

The Delaware Money School considers the following good money management. Spending from housing costs are @40%, utilities are @10%, Food and other grocery items are @15%, travel and transportation costs are @15%, savings should be @10% and miscellaneous costs of clothing, medical, cleaning and bath supplies etc. to be @10% of the take home pay.

NOTE:

It is not for DSS to provide a down payment on

luxury class new vehicles when other suitable less expensive and reliable vehicles for purchase are available. For instance, assuming that a specially equipped vehicle is not needed and the number of family members can be seated properly in the average vehicle, a request for a down payment on a **new** \$30,000 Lexus is to be denied since there are many new vehicles that would fit the needs of the requestor and provide reliable transportation for much less that amount. That said, DSS will not set a monetary value on the vehicle to be purchased due to needs such as large family size or medically necessary specially equipped vehicles that will increase the cost of a vehicle. If all other eligibility and cost consideration factors are met and **using the guide above the family can afford a \$20,000 Toyota, diversion assistance can be approved if all that is needed is money for a down payment.**

Documentation Required:

The payment document can be in the form of an invoice, bill, or cost estimate. It needs to be on the vendor's letterhead. All payment documents must include the name, address, and telephone number of the vendor and an original "live" signature. This information is necessary to ensure that proper fiscal accountability procedures are followed.

For automobile purchases or down payments the amount of purchase, year, make, model, and vehicle identification number (VIN) must be included on the payment document.

A check is issued to the vendor only. Make sure the customer name, customer address, MCI number, time period, the specific needs of the family, and the vendor's name and address are sent with the written estimate(s). The unit supervisor will then approve the diversion payment. The supervisor will sign the approval form. Keep a copy of the form for the file. Forward the information to the DSS Fiscal Office. The information will be then added to a database that will keep track of all diversion payments made. Staff will need to screen families through this database to make certain a person has not received Diversion Assistance during a time period that makes a family ineligible for it again or Delaware's TANF program.

The mailing address of the DSS Fiscal Office is:

Division of Social Services
 Fiscal Office: Attention Diversion Assistance
 Herman Holloway Sr. DHSS Campus
 1901 N. DuPont Highway - Lewis Building
 New Castle, DE 19720
 H150

DSS doesn't make any claims as to the quality of service provided, work performed, or goods delivered. It is up to the diversion assistance requestor to seek remedy if the quality or performance is substandard. If the service provided, work

performed, or goods delivered is of substandard quality. DSS will make attempts to stop payment on checks written, when able, and will provide copies of canceled checks to verify payment was made to the vendor in question if needed. It is up to the diversion assistance recipient to verify the quality was substandard. Diversion assistance will not be re-approved in a case in which the vendor has cashed the check unless good cause is claimed, the person verifies that they are taking legal means to have the situation rectified, and the request is approved by the Chief of Operations.

4001 Family Budget Group

4. A needy caretaker caring for an unrelated child under the age of six (6) who is needed in the home to care for the child because no one else is available can receive General Assistance (GA) for him/her self and the child in two assistance units but one budget group. SEE DSSM 3028.

5. A caretaker caring for an unrelated child may be able to receive GA for the child in one assistance unit while receiving GA for him/her self as well, in a separate assistance unit as long as one condition in DSSM 3019, other than #4 is met. They would be in two separate budget groups.

4001.1 Examples to illustrate rules regarding budget groups.

5. Mr. Smith is caring for a three year old child for whom he is not related. Mr. Smith is needy. Someone is needed in the home to care for the child but there is no one else available.

Mr. Smith and the child could each receive GA in separate assistance units. They would be in one budget group capped by the GA size for two (2) people.

6. Mrs. Robinson is caring for a child for whom she is not related. Mrs. Robinson is fifty-five (55) years of age.

Mrs. Robinson and the child could each receive GA in separate assistance units. They would be two (2) separate budget groups.

NOTE: When income is included in any of the above situations, it is possible that some of the recipients would be denied by maintaining separate budget groups, but all recipients could remain eligible if the groups are combined. In those situations the budget groups can be combined if the caretaker so chooses.

4005.1 Child Support Payments – TANF

In the TANF Program, the first \$50.00 of child support received in a month is disregarded in determining financial eligibility. Child support in excess of \$50.00 is counted as unearned income. If a unit is determined financially eligible, child support is disregarded in determining the amount of the grant.

For active cases, child support is collected and retained by the Division of Child Support Enforcement. The first \$50.00 of child support that is collected each month by DCSE is paid to the TANF payee as a bonus check. If the amount of support collected is less than \$50.00, the bonus check will equal the amount collected.

Pass-through/Disregard Bonus checks are paid the month following the month that the DCSE collects support. They are disregarded in determining TANF financial eligibility and grant amounts; however, they are counted as unearned income in the Food Stamp Program.

In the month of application if support is received prior to approval of a TANF grant, the support received minus the \$50.00 child support disregard is budgeted as unearned income. Support received after approval of the grant is subject to collection by the DCSE. DCSE cannot accept child support payments unless a Delaware support order is in place. Therefore, we should count the child support money received by the recipient prior to a support order in place as unearned income until such time as DCSE has a support order in place and can accept the payments.

EXAMPLE: A woman applies for TANF for herself and her children on 2/15. She reports that she received a \$100.00 support payment on 2/10 and expects to receive an additional \$100.00 on 2/24. She is found eligible for TANF on 2/15. In February, \$50.00 of child support is included in the TANF budget as unearned income. (\$100.00 received prior to approval of the grant - \$50.00 disregard = \$50.00 budgetable.) The recipient will receive a \$50.00 bonus check in March based on the \$100.00 payment collected by the DCSE on 2/24.

7002.1 Cash Assistance Overpayments

F. Exceptions To Repayment To DSS

For cases where TANF recipients retain child support payments assigned to the State, and DCSE has established a support order, the DCSE will file a claim, obtain a debt acknowledgment, and establish a repayment agreement with the indebted recipient.

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature Of The Proceedings

Delaware Health and Social Services (“Department”) /

Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) as it relates to the Temporary Assistance for Needy Families (TANF) State Plan as it relates to services to move families to work. 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 2004 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2004 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 during the public comment period.

Summary Of Proposed Change

Adds activities that assist in obtaining or maintaining employment or improve work performance as a work-related activity.

Findings Of Fact

The Department finds that the proposed changes as set forth in the January 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Temporary Assistance for Needy Families (TANF) State Plan as it relates to services to move families to work is adopted and shall be final effective March 10, 2004.

Vincent P. Meconi, Secretary, DHSS, 2/13/04

DSS FINAL ORDER REGULATION #04-04

REVISION:

Services to Move Families to Work

Delaware's goal is to place the adult recipient in unsubsidized employment as quickly as possible. To accomplish this goal, the current menu of services includes:

- Work readiness/Life skills
- Job search/Job placement
- Job retention
- Work Experience/OJT
- Education, including vocational education, as described in SB 101, effective July 2, 1999
- Provide financial management training;

- Work-related activities that assist in obtaining or maintaining employment or improve work performance.

Non-exempt TANF participants will participate in the job search program, consisting of job readiness classes and supervised job search activity. Unsuccessful job search participants can be placed in another job search sequence or another work-related activity such as an alternative work experience, OJT, remediation or a skills training program.

Clients must keep appointments with Employment and Training staff, cooperate in the development of the employment activities included in their Contract of Mutual Responsibility, and participate in employment and training activities. The penalty for non-compliance with any of the above client responsibilities will be subject to sanctions as described in "Sanctions: Failure to Comply with the Contract and Imposition of Sanctions" on page 29.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT 7 Delaware Code, Chapter 79 (7 Del.C. Ch. 79)

Secretary's Order No.: 2004-A-0004

Chronic Violator Regulation

I. Background

The proposed Chronic Violator Regulation was developed by the Chronic Violator Regulatory Development Committee. The Committee was created by Senate Substitute No. 1 for Senate Bill 33 as amended by Senate Amendment No. 2 in the 141st General Assembly. The bill's statutory provisions are found in 7 Del.C. §§7904 and 7906. The proposed regulation defines criteria and establishes a process for determining when a facility or regulated party should be declared a chronic violator by virtue of its inability to maintain compliance with Delaware's permits, laws or regulations.

The Committee was charged with developing the draft regulation, which was completed in June 2002. Since that time, the regulation has gone through public notice in the State Register of Regulations, a public workshop and public hearing. The Register Notice was published in the February 1, 2003 publication of the Delaware Register of Regulations. The public workshop was held on March 11, 2003 and the public hearing was held on Wednesday, March 19, 2003.

The public hearing deadline for submitting comments on the proposed regulation was Wednesday, March 26, 2003.

On May 1, 2003, the Committee was reconvened at the request of the Secretary in order to address, collectively as a committee, comments received at the public hearing. 7 **Del.C.** § 7904(a) states that: “[t]he Secretary, *in conjunction with* a committee of stakeholders....shall define criteria and establish a process for determining when a facility or regulated party should be declared a chronic violator...” (emphasis added). In order to fulfill this statutory requirement, the Secretary asked for the Committee’s assistance in addressing the public comments received. At the May 1, 2003 Committee Meeting, a motion was made and a vote was taken to not address all public comments individually.

There were enough favorable votes to sustain the motion, therefore the Committee voted not to address public comments. The majority of the Committee members present felt that the regulation should go forward as written, and that the proposed regulation carefully considered and balanced all stakeholders’ interests. Even so, the Committee was unable to reach a favorable vote for further action. With no further formal guidance from the Committee on the public comments received, the Department compiled its Response Document on December 18, 2003 and submitted the same to the Hearing Officer.

II. Findings and Conclusions:

In the Response Document dated December 18, 2003, the Department has identified and summarized the relevant comments submitted for the record in very accurate and thorough manner. Following each comment, the Response Document provides a reasoned discussion along with a conclusion which resolves the question presented. These detailed explanations and conclusions are sufficient to serve as findings with respect to each relevant issue and are specifically adopted and incorporated herein for that purpose. In essence, the record supports issuance of the proposed regulation which was the subject of the public hearing and review process. Proper notice of the hearing was provided as required by law.

III. Order

In view of the above findings, the proposed regulations shall be promulgated in final form as reflected in the text attached hereto and shall become effective upon compliance with the requirements of the Administrative Procedures Act.

IV. Reasons

As reflected in the Response Document, this regulation represents a rational, carefully considered balance of the

various participant’s views involved in this rulemaking and is consistent with the enabling legislation under which it is being promulgated.

John A. Hughes, Secretary

Date of Issuance: February 9, 2004

Effective Date of the Order: March 11, 2004

Chronic Violator Regulation

1.0 Authority

1.1 These regulations are promulgated pursuant to the authority granted to the Secretary by 7 **Del.C.** Chapter 79.

2.0 Applicability

2.1. The Chronic Violator regulations are administered by the Department of Natural Resources and Environmental Control pursuant to 7 **Del.C.** Chapter 79.

2.2. These regulations apply to the following DNREC Regulatory Programs adopted under Title 7: Chapters 40, 60, 62, 63, 66, 70, 72, 74, 77, 78, and 91 and Title 16 Chapters 63 and 78:

2.2.1 Erosion and Sedimentation Control (7 **Del.C.** Chapter 40) Control of erosion of sedimentation at construction sites and other land disturbing activities.

2.2.2 Stormwater Management (7 **Del.C.** Chapter 60) -- Under the NPDES program for storm water from facilities and hard surfaces.

2.2.3 Solid Waste (7 **Del.C.** Chapter 60) -- Landfill permitting, transportation of solid waste, and illegal dumping of solid waste.

2.2.4 Water Discharges (7 **Del.C.** Chapter 60) -- NPDES program, all point source discharges into waters of the State.

2.2.5 Air Emissions (7 **Del.C.** Chapter 60) -- All point source emissions to air, including mobile and stationary sources.

2.2.6 Marinas (7 **Del.C.** Chapter 60) - All boat docking facilities, marinas, and vessel pumpout stations.

2.2.7 Scrap Tires (7 **Del.C.** Chapter 60) -- Storage requirements for scrap tires.

2.2.8 Beverage Containers (7 **Del.C.** Chapter 60) -- Bottle Bill, requires stores to take returnable containers and pay the refund.

2.2.9 Ocean Dumping (7 **Del.C.** Chapter 60) -- Prohibits the disposal of solid wastes in the ocean and other waters of the State.

2.2.10 Water Supply (7 **Del.C.** Chapter 60) - Permitting of water supply wells.

2.2.11 On-Site Wastewater (7 **Del.C.** Chapter 60) -- Permitting of on-site wastewater treatment systems.

2.2.12 Debris Pits (7 **Del.C.** Chapter 60) -- Remediation of debris disposal areas.

2.2.13 Labeling of Plastic Products (7 Del.C. Chapter 60) -- Requires that all plastic containers sold in Delaware contain the triangle enclosed code number of the type of plastic the container is made of.

2.2.14 Oil Pollution Liability (7 Del.C. Chapter 62) -- Prohibits the discharge of oil to the water or land.

2.2.15 Hazardous Waste (7 Del.C. Chapter 63) -- Regulates the generation, storage, transportation, treatment and disposal of hazardous waste.

2.2.16 Coastal Zone (7 Del.C. Chapter 70) -- Control of the location, extent, and type of industrial development in Delaware's coastal areas.

2.2.17 Underground Storage Tanks (7 Del.C. Chapter 74) -- Controls the storage of petroleum products in underground storage tanks.

2.2.18 Aboveground Storage Tanks (7 Del.C. Chapter 74A)-- Controls the storage of petroleum products and hazardous substances in aboveground storage tanks.

2.2.19 Extremely Hazardous Substances (7 Del.C. Chapter 77) -- Prevention of sudden releases of extremely hazardous substances and the generation of pressure waves and thermal exposures beyond the property boundaries of the facility where they occur and the catastrophic health consequences caused by short-term exposures to such accidental releases.

2.2.20 Pollution Prevention (7 Del.C. Chapter 78) -Establish a program to demonstrate and facilitate the potential for pollution prevention and waste minimization through technical assistance, education, and outreach.

2.2.21 Hazardous Substances Cleanup (7 Del.C. Chapter 91) -- State Superfund program.

2.2.22 Emergency Planning/Community Right-to-Know --(16 Del.C. Chapter 63) -- Requires the report of hazardous materials meeting specific threshold requirements stored at facilities for the purpose of emergency response and community right-to-know.

2.2.23 Asbestos (16 Del.C. Chapter 78) -- Regulates the practice of asbestos containment, removal, transportation, storage and disposal.

2.2.24 Wetlands (7 Del.C. Chapter 66) -- Protection of tidal wetlands.

2.2.25 Subaqueous Lands (7 Del.C. Chapter 72) - Control of activities in state-owned subaqueous lands.

3.0 Definitions

The following definitions shall have the meaning ascribed for the purposes of enforcing Chapter 79 and this Regulation only:

3.1 **"Chronic Violator"** means a facility or regulated party that is unable to maintain compliance or has engaged in a pattern of willful neglect or disregard with respect to the State's environmental permits, laws, or regulations as administered by the Department.

3.2 **"Days"** means calendar days.

3.3 **"Facility"** means any site or structure regulated by the Department or subject to the provisions contained in the laws listed under Section 2.2 of this regulation.

3.4 **"Department"** means the Department of Natural Resources and Environmental Control.

3.5 **"Person"** means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation or authority), limited liability company, association, state, municipality, commission, political subdivision of a state or any interstate body.

3.6 **"Public Meeting"** means a forum to receive oral and written comments and other supporting materials from the public and the facility or regulated party as part of the administrative record.

3.7 **"Regulated Party"** means any person regulated by the Department or subject to the provisions contained in the laws listed under Section 2.2 of this regulation.

3.8 **"Secretary"** means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee.

4.0 Criteria

In determining if a facility or regulated party is a chronic violator, the Secretary shall apply the following criteria with respect to the State's environmental permits, laws or regulations as administered by the Department:

4.1 Inability to maintain compliance; or

4.2 Engaged in a pattern of willful neglect; or

4.3 Engaged in a pattern of disregard.

A facility or regulated party need only meet one of these criteria in order to be designated a chronic violator.

5.0 Initiation of Review

5.1 At the Secretary's discretion, he/she may initiate a review of any facility or regulated party at any time to determine if the facility is a chronic violator.

5.2 The Secretary shall review a facility or regulated party to determine if it is a chronic violator if one of the following conditions apply in a time frame not to exceed 5 years:

5.2.1 Three (3) or more of any combination of administrative orders, civil judicial actions, court orders, negotiated settlements, and criminal convictions (excluding convictions pursuant to 7 Del.C. §6013(c)) at the same facility regardless of owner; or

5.2.2 Three (3) or more of any combination of administrative orders, civil judicial actions, court orders, negotiated settlements, and criminal convictions (excluding convictions pursuant to 7 Del.C. §6013(c)) under the same Department regulatory program, as defined in Section B, against the same person at different locations.

6.0 Notification of Review

6.1 The Secretary shall issue a Notice of Chronic

Violator Review to the facility or regulated party within ten (10) days of the Secretary's decision to conduct a review.

6.2 Within ten (10) days after the facility or regulated party has received the written notice, the Department shall publish a public notice stating that a review has commenced, identifying the facility or regulated party being reviewed, describing the reason why the review was initiated, and requesting public and facility or regulated party comments within sixty (60) days.

6.3 Any comments received by the Department shall be made available to the facility or regulated party and the public, within three (3) working days of receipt. A hard copy version of comments will be stored in the Department's facility file.

6.4 The Department shall issue a written notice of the status of the review to the facility or regulated party and to the public every six months from the date of the Public Notice. If, during said review, new violations come to the attention of the Department the Secretary may consider the new violations and allow a further comment period by the facility, regulated party, or the public.

7.0 Factors to be Considered When Conducting Review

The Secretary may consider any relevant factors when deciding whether a facility or regulated party meets one or more of the chronic violator criteria. In conducting his/her review, the Secretary shall consider all relevant and reliable information available or submitted to the Department from all sources. Factors that must be considered are:

7.1 The nature and extent of the harm caused or threatened.

7.2 The impact on the integrity of regulatory programs.

7.3 Duration of noncompliance.

7.4 Number of violations of a similar nature.

7.5 Total number of violations of all types.

7.6 Economic benefit attributable to violations.

7.7 Relationship/relevance of violations to activity for which permit is sought.

7.8 Whether any or all of the violations were willful or grossly negligent.

7.9 The extent of deviation from the permit, order or other requirement.

7.10 The demonstrated attitude of new owners/managers (if ownership and/or management has changed at the facility).

7.11 Actions taken or not taken to prevent, mitigate or respond to harm caused or threatened by the violation.

7.12 Whether any or all of the violations were self-reported within 15 consecutive days after the date of discovery.

All of these factors need not apply in order for a facility or regulated party to be considered a chronic violator.

8.0 Violations to be Considered When Conducting Review

The Secretary may consider any violations when conducting his/her review. The types of violations that shall be considered by the Secretary shall include, but not be limited to:

8.1 Violations that cause or genuinely threaten harm to the environment or to public health or safety.

8.2 Violations resulting in criminal convictions.

8.3 Tampering with monitoring or sampling equipment or interfering with samples or analytical results.

8.4 Filing false reports or inaccurate or misleading information.

8.5 Failing to maintain or use required pollution control equipment, structures or practices.

8.6 Repeatedly failing to submit required reports of regulated activity such as Discharge Monitoring Reports.

8.7 Repeatedly conducting a regulated activity without a required permit or authorization.

9.0 Secretary's Determination

In making a determination, the Secretary shall consider all relevant and reliable information available or submitted to the Department from all sources. The Secretary shall consider the following when determining if a facility or regulated party meets one or more of the chronic violator criteria in Section 4.0:

9.1 Relevant factors per Section 7.0;

9.2 Violations per Section 8.0;

9.3 Public comments received per Section 6.0; and

9.4 Comments from the facility or regulated party per Section 6.0.

10.0 Notification of Determination

10.1. The Secretary shall issue a Notice of Chronic Violator Determination to the facility or regulated party once a determination has been made. The notice will describe in detail the basis for the Secretary's determination. If the facility or regulated party is determined to be a Chronic Violator, the notice will also describe the penalties, limits, requirements or restrictions being imposed in accordance with Section 11.0 and the requirements to be met in order to petition for removal of the Chronic Violator designation.

10.2 Once the facility or regulated party has received the Notice of Chronic Violator Determination, the Department shall publish, within ten (10) days, a public notice announcing the determination and describing the basis for the Secretary's determination, and information on how to obtain the full Determination document. If the facility or regulated party is determined to be a Chronic Violator, the Public Notice will also summarize the penalties, limits, requirements or restrictions being imposed.

10.3 Persons or facilities determined by the Secretary to be chronic violators shall be provided due

process under 7 Del. C. § 6008 and § 6009.

11.0 Penalties and Requirements

11.1 The Secretary may impose limits, requirements or restrictions on a facility or regulated party determined to be a chronic violator by virtue of the exercise of his/her authority over such facility or regulated party through permitting provisions or enforcement actions. Such limits, requirements or restrictions may include, but not be limited to:

11.1.1 denying permit applications or modifying, suspending or revoking operating permits.

11.1.2 imposing a schedule of compliance;

11.1.3 requiring capital improvements and associated performance standards;

11.1.4 specifying the requirements for development and implementation of a system for managing environmental performance and compliance; or

11.1.5 instituting a requirement for the facility or regulated party to submit an annual environmental performance statement. Such a statement shall include, but not be limited to:

11.1.5.1 a description of the facility.

11.1.5.2 a listing of environmental permits held by the facility.

11.1.5.3 emissions and discharges from the facility.

11.1.5.4 disclosure of environmental violations of enforcement actions taken against the facility during the previous year.

11.1.5.5 a description of any pollution prevention or waste reduction activities undertaken at the facility during the previous year and the results of those activities.

11.1.5.6 plans to achieve compliance with all applicable laws, regulations or permits.

11.2 The Secretary may reject any permit application or revoke any permit upon a finding that the applicant has been determined by the Secretary to be a chronic violator.

11.3 Notwithstanding other applicable enforcement provisions contained in relevant sections of Chapters covered by 7 Del. C. § 7901(b), the Secretary is authorized to impose an administrative penalty of up to \$10,000 per day for each violation against any person that is determined to be a chronic violator in accordance with the provisions of 7 Del. C. § 7904(a). The person's right to contest or appeal the assessment of a penalty authorized under this Section shall be in accordance with the applicable provisions of the Delaware Code under which the violation and enforcement action is being taken.

12.0 Chronic Violator Delisting

12.1 Any person determined to be a Chronic

Violator may petition the Secretary to have the Chronic Violator designation removed once it has met the limits, requirements, or restrictions of the Notice of Chronic Violator Determination. The petition must include the following information, as appropriate:

12.1.1 demonstration of compliance with the limits, requirements, or restrictions of the Notice of Chronic Violator Determination through an audit conducted by an independent third party if required by the Secretary;

12.1.2 description of actions taken to prevent violations of the kind that led to the notice; and

12.1.3 description of other violations that have occurred since the notice and how they were addressed.

12.2 Upon receipt of the petition, the Department shall issue a public notice announcing the petition and requesting public comments within 90 days.

12.3 Within 30 days of receipt of the petition, the Department will notify the facility or regulated party of the administrative completeness of the petition or its deficiencies.

12.4 Upon a meritorious request for a public meeting, as defined in Section C.6. of this Regulation, received within a reasonable time as stated in the Public Notice, the Secretary shall conduct a public meeting to review and receive additional comments on the petition.

12.5 The Department shall have 90 days from the date the petition is determined to be administratively complete to conduct applicable inspections of the facility and/or the regulated party's record to confirm the petition's statements.

12.6 The Secretary will then have an additional sixty (60) days to review the petition, the inspection reports, audit reports if required, and public comments and issue a decision to the facility or regulated party that the Chronic Violator Status has been withdrawn or will be continued.

12.7 When the petition is granted or denied, the Secretary will issue a letter to the facility or regulated party, and the Department will issue a public notice indicating the Chronic Violator's status.

DIVISION OF AIR AND WASTE MANAGEMENT WASTE MANAGEMENT SECTION

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

Secretary's Order No.: 2004-A-0005

**2003 Proposed Amendments to the
Delaware Regulations Governing Hazardous Waste**

I. Background

On December 10, 2003 a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste*. The proposed amendments have already been promulgated by EPA and are already in effect at the Federal level. Delaware is proposing to adopt these amendments as part of its requirements to maintain equivalency with its program authorization and equivalency with EPA's hazardous waste program.

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

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated January 29, 2004, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated January 29, 2004 are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that the proposed amendments to the **Delaware Regulations Governing Hazardous Waste** be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

IV. Reasons

Adopting the proposed amendments to the **Delaware Regulations Governing Hazardous Waste** will be beneficial to the State of Delaware, in that these amendments will add consistency and/or clarification to the existing regulations. Additionally, some of these amendments will enable the State of Delaware to improve and/or enhance the overall performance of the hazardous waste management program. Furthermore, the adoption of these amendments will permit the State of Delaware to maintain its RCRA program delegation, and remain current with the Federal hazardous waste program.

John A. Hughes, Secretary

Date of Issuance: February 12, 2004

Effective Date of the Amendment: March 21, 2004

**2003 Amendments to
Delaware Regulations Governing Hazardous Waste****Synopsis**

This synopsis presents a brief description of the 2003 amendments to *Delaware Regulations Governing Hazardous Waste* (DRGHW) and a list of those sections generally affected by the amendments. This summary is provided solely for the convenience of the reader.

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

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

Summaries for the regulatory amendments are listed below and organized by EPA's promulgating **Federal Register** notice. For additional information, please contact the Solid and Hazardous Waste Management Branch (SHWMB) at (302) 739-3689.

1. Title: Storage, Treatment, and Disposal of Mixed Waste: Mixed Waste Rule

Federal Register Reference: 66 FR 27218 – 27266

Federal Promulgation Date: May 16, 2001

Summary: This amendment was originally proposed by the State during a March 12, 2002 Public Hearing. However, a comment was received at the Hearing regarding a comparison of the EPA amendments with current Nuclear Regulatory Commission (NRC) requirements. After reviewing the comment a response was prepared and mailed to the commenter on April 10, 2002.

The rule promulgated conditional exemptions for: (1) low-level mixed wastes (LLMW) from most RCRA Subtitle C storage and treatment regulations, and (2) LLMW and technologically enhanced naturally occurring and/or accelerator-produced radioactive material (NARM) from most RCRA Subtitle C manifesting, transportation, and disposal regulations when specified conditions are met. With this rule, the EPA and the State intend to provide regulatory flexibility and relief to facilitate the disposal of

certain LLMW and eligible NARM.

Sections of the DRGHW effected by this amendment:
Adds new subpart N (§§266.210 to 266.360).

2. Title: **Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules:**

A. Mixture and Derived-From Rules

B. Land Disposal Restrictions

Federal Register Reference: 66 FR 27266 – 27297

Federal Promulgation Date: May 16, 2001

Summary: This amendment was originally proposed by the State during a March 12, 2002 Public Hearing but was withdrawn after the SHWMB determined that EPA inadvertently deleted certain regulatory language. On October 3, 2001 EPA promulgated a clarifying revision to the May 16, 2001 Rule that reinserted the deleted language.

The May 16, 2001 Federal Rule contained two revisions:

(A) This rule finalizes the retention of the mixture rule and the derived-from rule with two revisions. The first revision expands the exclusion for mixtures and/or derivatives of wastes listed solely for the ignitability, corrosivity and/or reactivity characteristic. The second revision is a new conditional exemption from the mixture and derived-from rules for mixed wastes.

(B) This rule also corrects an error made by the June 8, 2000 rule (65 FR 36365). The June 8, 2000 rule inadvertently removed the entry for hazardous waste code U048 from 40 CFR part 268, Appendix VII. Note: Delaware did not adopt the EPA error contained in the June 8, 2000 Federal Register. The correct language is being reprinted as part of this amendment without change to provide clarity to the reader.

Sections of the DRGHW effected by this amendment:
Amends §261.3, paragraphs (a), (c), (g), (h), and Part 268, Appendix VII, Table 1.

3. Title: **Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived from Rules**

Federal Register Reference: 66 FR 50332-50334

Federal Promulgation Date: October 3, 2001

Summary: This rule clarifies the May 16, 2001 Federal amendment regarding the Mixture and Derived-From Rule. The State originally proposed adopting the May 16, 2001 Federal rule in 2002 but withdrew the proposed amendment due to errors in the Federal promulgation language. The language in this proposed amendment corrects that error.

Sections of the DRGHW effected by this amendment:

Amends §§261.3(a)(2) and 261.3(g)(4).

4. Title: **Amendments to Corrective Action Management Unit Rule**

Federal Register Reference: 67 FR 2962-3029

Federal Promulgation Date: January 22, 2002

Summary: This change amends the Corrective Action Management Unit (CAMU) rule to facilitate treatment, storage and disposal of hazardous wastes managed for implementing cleanup.

Sections of the DRGHW effected by this amendment:
Amends §260.11(a)(11).

5. Title: **Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic**

Federal Register Reference: 67 FR 11251-11254

Federal Promulgation Date: March 13, 2002

Summary: This rule was promulgated in response to vacatur ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers, v. EPA 208 F.3d 1047 (2000)*. The court vacated two parts of the May 26, 1998 Phase IV LDR rule (63 FR 28556) in response to a legal challenge from the Association of Battery Recyclers, the National Mining Association and other trade groups. The first vacated part of the rule required deletion of regulatory language classifying mineral processing characteristic by-products and sludges being reclaimed as solid wastes. The second vacated part disallows the Toxicity Characteristic Leaching Procedure (TCLP) to be used for determining whether manufactured gas plant (MGP) waste is hazardous.

Sections of the DRGHW effected this change include:
Amends §§261.2(c)(3), 261.4(a)(17), and 261.24(a).

6. Title: **Zinc Fertilizers Made From Recycled Hazardous Waste Secondary Materials: Zinc Fertilizer Rule**

Federal Register Reference: 67 FR 48393-48415

Federal Promulgation Date: July 24, 2002

Summary: The amendments promulgated by EPA in this rule established a more consistent regulatory framework for the practice of making zinc fertilizer products from recycled hazardous secondary materials. More specifically, it established conditions for excluding hazardous secondary materials used to make zinc fertilizers from the regulatory definition of solid waste. The rule also established new

product specifications for contaminants in zinc fertilizers made from those secondary materials.

The majority of the changes included in this Federal Register Notice are considered less stringent than current Federal program. Therefore, State has chosen to only adopt the portion of this Rule that removes a previous exemption from regulation for zinc fertilizers. This allows the State to be more stringent than the Federal program.

Sections of the DRGHW effected this change include: Amends §266.20(b); and Amends §268.40 by removing and reserving paragraph (i).

7. Miscellaneous Changes

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

Proposed miscellaneous changes will also: ~~Add new paragraph to §261.22(a) regarding pH of a solid;~~ Amend §263.102 regarding denial, revocation, termination or modification of hazardous waste transporter permits; Amend §265.195(c) to add requirement for generators accumulating hazardous waste in tanks to maintain written documentation of tank inspections; Amend §273.19 to require small quantity handlers of universal waste to keep written records of shipments of universal waste.

Sections of the DRGHW effected by this amendment: Amends §§260.10; 261.1(c)(8); 261.22(a)(2) & (3); 263.102; 264.145; 265.195(c); 273.19; 122.20(a)(1).

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))

Order No. 2004-F-0007

Tidal Finfish Regulations 3503 and 3504

Summary Of Evidence And Information

Pursuant to due notice Vol. 7, issue 7 DE Register of Regulations, 909-911 (1/1/04), the Department of Natural Resources and Environmental Control proposes changes to Tidal Finfish Regulations 3503 and 3504 pertaining to striped bass minimum size limits and daily harvest and possession limits. The purpose of these amended regulations is to come into compliance with Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass.

A public hearing was held on January 29, 2004 to take comments on proposed amendments to Tidal Finfish Regulations 3503 and 3504. Comments were taken that evening and during the remainder of the comment period which remained open for written, faxed, or e-mail comments until 4:30 PM February 2, 2004.

Findings Of Fact

- 903(e)(2)(a) 7 Delaware Code authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish.
- There is an interstate fisheries management plan amendment (Amendment 6) recently approved by the Atlantic States Marine Fisheries Commission for striped bass.
- Although the majority of the comments received relative to weakfish favored a minimum size of 14 or 15 inches, several Delaware speakers at the hearing and some of the e-mail respondents stressed the importance of Delaware being consistent with New Jersey because of our shared waters.
- In regard to striped bass, 10 comments were received in favor of option 1, two fish per day at a minimum size of 28 inches. No one favored the other options, including maintaining the present slot limit, in recognition that we will have to reduce our open season length fairly drastically in order to effect a 33% reduction in harvest in order to be in compliance with Amendment 6 to the Atlantic Striped Bass Fishery Management Plan.
- There were no comments from the public relative to the proposed clarification of 3503 Section 3.0 with regard to the definition of a day. During the comment period, the Division of Fish and Wildlife Enforcement Section, via Enforcement Chief James Graybeal, suggested that the proposed wording change in §3503 Sect. 3.0 be further modified to define a day as a 24-hour period and to strike the proposed wording that would define a day as "...midnight to the next midnight thence ensuing..." in regard to the take and possession of more than two (2) striped bass per day. There were no comments for the hearing record concerning the proposed changes to commercial minimum size limits for striped bass that are necessary to remain in compliance with Amendment 6. An Atlantic Ocean gill netter called the office on January 30 to

complain about the proposed raising of the minimum commercial size limit in the Ocean and the Coastal Bays to 28 inches from the present 20 inches, but this fisherman did not submit any formal comments for the Hearing Record.

Conclusions

I have reached the following conclusions:

- Delaware should change the striped bass recreational minimum size limit to 28 inches total length and the daily harvest and possession limit to two striped bass per 24-hour period.
- The commercial size limit should be raised to 28 inches total length in all tidal water areas of the state and at all times of the year with the exception that during the months of March and April in the Delaware River and Delaware Bay and its tributaries, the minimum commercial size limit for gill net fisheries should remain 20 inches total length. In the Nanticoke River and its tributaries in Delaware, the minimum size limit for striped bass should remain 20 inches TL during the spring commercial gill net season.

ORDER

It is hereby ordered this 13th day of February in the year 2004 that amendments to Tidal Finfish Regulations 3503 and 3504, 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, 2004.

John A. Hughes, Secretary
Department of Natural Resources
and Environmental Control

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit. (Formerly Tidal Finfish Reg. 6)

(Penalty Section 7 Del.C. 936(b)(2))

1.0 It shall be lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.

2.0 It shall be unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to

possession any striped bass in gill nets.

3.0 Unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass per day ~~[(defined as midnight to the next midnight thence ensuing) a day being 24 hours)]~~ from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

4.0 Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

3504 Striped Bass Possession Size Limit; Exceptions. (Formerly Tidal Finfish Reg. 7)

(Penalty Section 7 Del.C. 936(b)(2))

1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1) or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession ~~more than two (2) striped bass from the tidal waters of this State in one day provided one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length. any striped bass that measures less than twenty-eight (28) inches in total length.~~

2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1) or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than ~~twenty (20) twenty-eight (28) inches~~ in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay ~~and or~~ their tributaries during the months of March and April or from the tidal waters of the Nanticoke River or its tributaries in the month of March.

3.0 Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~24~~ 28 inches, total length, unless said striped bass is in one or more of the following categories:

3.1 It has affixed, a valid strap tag issued by the Department to a commercial ~~food gill net~~ fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay [or their tributaries] during the months of March and April; or from the tidal waters of the Nanticoke River or its tributaries in the month of March; or

3.2 It was legally landed in another state for

commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

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

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

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

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

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

6.0 It shall be unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, except those striped bass caught in a commercial finfisherman gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the months of [March and] April ~~and May~~ or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries in the month of March. ~~authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty four (24) inches in total length.~~

7.0 ~~It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.~~

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

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

See 4 DE Reg 1552 (3/1/01)

See 6 DE Reg 1512 (5/1/01)

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council on Tidal Finfisheries	Mr. Brian R. Hoffecker	1/15/2009
Architectural Accessibility Board	Mr. Changuk Yoon	12/23/2007
Authority on Radiation Protection	Mr. Jacob Beutel	1/12/2007
Board of Accountancy	Mr. Paul D. Sunshine	1/12/2007
Board of Clinical Social Work	Ms. Gloria L. Ho-Ruggerio	10/23/2004
Board of Dental Examiners	Robert R. Hoopes, D.D.S. Mr. John M. Kirby Thomas W. Mercer, D.D.S.	1/12/2007 1/12/2007 1/12/2007
Board of Electrical Examiners	Mr. Donald T. Collins Ms. Shirley S. Good	1/12/2007 1/12/2007
Board of Examiners of Psychologists	Ms. Lisa C. Gardner	12/23/2006
Board of Funeral Services	Mr. William J. Doherty, II Mr. Bennie L. Smith	12/23/2006 12/23/2006
Board of Nursing	Ms. Carolyn E. Hill Ms. Diana E. Padula	1/12/2007 1/12/2007
Board of Pension Trustees	Mr. Philip S. Reese	Pleasure of the Governor
Board of Plumbing Examiners	Mr. Frank H. Beebe Ms. Carol A. Guilbert Mr. Dess S. Stokes	1/12/2007 1/12/2007 1/12/2007
Board of Podiatry	Jeffrey C. Barton, D.P.M.	12/23/2006
Cash Management Policy Board	Mr. David F. Marvin	1/15/2007
Child Death and Stillbirth Review Commission	Ms. Marie E. Renzi	12/23/2006
Child Placement Review Board-Kent	Ms. Kathleen M. Jamison Ms. Wilberta Lewis Ms. Sheri J. Morris	12/23/2006 12/23/2006 12/23/2006

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Child Placement Review Board-New Castle	Ms. Alexis V. Ciconte	12/23/2006
Child Placement Review Board-New Castle	Ms. Trudy Halprin	7/29/2006
	Ms. Tanya Hynson	12/23/2006
	Ms. Vicky K. Kleinman	12/23/2006
	Ms. Elaine Markell	12/23/2006
	Ms. Lillian McGowan	12/23/2006
	Ms. Yahna Talley	2/14/2004
	Ms. Barbara P. Williams	12/23/2006
	Ms. Marian L. Wilson	12/23/2006
Child Placement Review Board-Sussex	Ms. Tiffany B. Derrickson	12/23/2006
	Ms. Sandra S. Lord	12/23/2006
	Ms. Bonita J. Maull	12/23/2006
	Ms. Marie Wallop	12/23/2006
Commission on Uniform State Laws	Mr. David C. McBride	Pleasure of the Governor
Community Notification Working Group	Mr. James Apostolico	Pleasure of the Governor
	Lewis L. Atkinson, Ed.D.	Pleasure of the Governor
	Mr. William G. Bush, IV	Pleasure of the Governor
	Mr. Carl Danberg	Pleasure of the Governor
	Ms. Karen De Ramso	Pleasure of the Governor
	Ms. Janice Mink	Pleasure of the Governor
	Mr. Marc D. Richman	Pleasure of the Governor
Council on Banking	Mr. Clinton W. Walker	5/1/2005
Council on the Blind	Ms. Alice Capodanno	1/12/2007
	Mr. Douglas Salter	1/12/2007
	Ms. Beatrice P. Simonds	1/12/2007
	Mr. Charles Yelle	9/14/2004
Council on Correction	Ms. Stephen B. Ackerman	6/12/2006
	Ms. Virginia S. Thogersen	2/27/2005

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Forestry	Mr. Allen Jones	12/23/2006
	Mr. Raymond Taraila	12/23/2006
Council on Hispanic Affairs	Ms. Sandra D. Bucay	1/12/2007
	Mr. Henry P. Cruz	1/12/2007
Council on Libraries	Ms. Jean Gandek	6/3/2005
Council on Manufactured Housing	Ms. Jane D. Sklencar	6/11/2004
Council on Police Training	Mr. Fred Duncan	Pleasure of the Governor
Council on Real Estate Appraisers	Mr. Arthur B. Cahall	1/8/2007
Delaware Advisory Council on Career Education	J. Richard Bacon, Ed.D.	Pleasure of the Governor
	Ms. Sandra L. Daly	Pleasure of the Governor
	Mr. Benjamin Ryan	Pleasure of the Governor
	Mr. James E. Sturgis	Pleasure of the Governor
	Mr. Robert C. Suppe	Pleasure of the Governor
Delaware Agricultural Lands Preservation Foundation	Mr. Lynnwood L. Davenport, Trustee	1/12/2007
	Mr. Alden S. Hopkins, Trustee	1/12/2007
Delaware Bicycle Council	Mr. Nicholas Vacirca	1/8/2007
	Mr. Thomas Hartley	5/10/2004
	Mr. Timothy G. Willard	12/23/2006
Delaware Commission of Veterans' Affairs	Ms. Ruth B. Harden	1/12/2008
Delaware Emergency Medical Services Oversight Council	Mr. Philip G. Cabaud	Pleasure of the Governor
	Mr. James J. Cloney	Pleasure of the Governor
Delaware Gaming Control Board	Mr. Thomas R. Trader	1/8/2009

GOVERNOR'S APPOINTMENTS

1211

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Greenways and Trails Council	Ms. Gail VanGilder	12/23/2006
Delaware Heritage Commission	Mr. Norman Borish	12/23/2006
	Mr. Robert L. Byrd	1/28/2007
	Ms. Reba R. Hollingsworth	1/28/2007
	Mr. Francis A. Ianni	12/23/2006
	Robert M. Stark, Ph.D.	12/23/2006
Delaware Manufactured Home Relocation Authority	Mr. Raymond A. Paylor	6/30/2009
Delaware Solid Waste Authority	Mr. William J. DiMondi	1/15/2007
	Mr. Timothy P. Sheldon	7/6/2004(interim)
	Mr. Timothy P. Sheldon	3/14/2005
Developmental Disabilities Council	Mr. Brian P. Donovan	1/28/2010
	Ms. Tracey E. Eastman	1/12/2010
	Mr. Steven R. Tull	1/12/2010
Federal Juvenile Justice Advisory Committee	Mr. Tyrone J. Jones	Pleasure of the Governor
Greater Wilmington Convention and Visitors Bureau	Mr. Ernest J. Camoirano	5/14/2004
	Ms. Laura Scanlan	1/28/2007
	Mr. David Z. Tuttleman	1/28/2007
	Mr. Ferdinand Wieland	1/28/2007
Industrial Accident Board	Ms. Romaine B. Seward	1/15/2010
Judicial Nominating Committee	Ms. Mary L. McKenzie-Dantzler	1/22/2007
Justice of the Peace for Kent County	Mr. Douglas P. Kennedy Cox	1/17/2008
Juvenile Justice Advisory Group	Mr. Michael Arrington, Chair	Pleasure of the Governor
Parks and Recreation Council	Ms. Joan P. Brown	1/21/2007
Pesticide Advisory Committee	Mr. David Allen Chorman	12/23/2006
	Mr. Jeffrey G. Hastings	12/23/2006
	Gerald Llewellyn, Ph.D.	12/23/2006
Real Estate Commission of Delaware	Mr. Paul Davis	1/12/2007

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Real Estate Commission of Delaware	Mr. John R. Giles	1/12/2007
	Mr. James D. McGinnis	1/12/2007
	Mr. Marvin Sachs	1/12/2007
	Ms. Marcia J. Shihadeh	1/12/2007
Recycling Public Advisory Council	Mr. Donald H. Mulrine, Jr.	1/28/2007
	Mr. Paul R. Wilkinson	1/28/2007
Selective Service System Local Board	Mr. Frederick L. Cottrell, III	Nominated for a Position as a Member
	Ms. Linda G. Watts	Nominated for a Position as a Member
Statewide Independent Living Council	Ms. Helen T. McDonnell	1/28/2007
	Ms. Christine E. Trincia	1/28/2007
Tax Appeals Board	Ms. Regina C. Dudzic	1/15/2007
Welfard Employment Committee	Mr. James R. Gettier	4/10/2005
Workforce Investment Board	Mr. Robert M. Lau	Pleasure of the Governor

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER FIFTY-THREE**

**RE: REALLOCATION OF STATE PRIVATE
ACTIVITY BOND VOLUME CAP FOR
CALENDAR YEAR 2003 AND INITIAL
SUBALLOCATION OF STATE PRIVATE
ACTIVITY BOND VOLUME CAP FOR
CALENDAR YEAR 2004**

WHEREAS, pursuant to 29 **Del.C.** §5091, the State's private activity bond volume cap ("Volume Cap") for 2003 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 Forty-One, \$114,290,000 of the Volume Cap for 2003 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 Forty-One is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 2003 and 2004 is allocated among the various State and local government issuers by 29 **Del.C.** §5091(a); and

WHEREAS, Kent County has reassigned \$22,860,000 of its unallocated Volume Cap for 2003 to the State of Delaware; and

WHEREAS, Sussex County has reassigned \$22,860,000 of its unallocated Volume Cap for 2003 to the State of Delaware; and

WHEREAS, the City of Wilmington has reassigned \$28,570,000 of its unallocated Volume Cap for 2003 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has \$41,745,000 of remaining Volume Cap for 2003, previously allocated by Executive Order Number Forty-One; and

WHEREAS, pursuant to 29 **Del.C.** §5091(b), the State's \$116,895,000 Volume Cap for 2004 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 \$74,290,000 unallocated Volume Cap for 2003 reassigned to the State of Delaware by other issuers be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$41,745,000 of unallocated Volume Cap reassigned by the Delaware

Economic Development Authority be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the State's Volume Cap for 2004 of \$116,895,000 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 \$74,290,000 of unallocated Volume Cap for 2003 that has been reassigned by Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby sub-allocated to the Delaware State Housing Authority for carry forward use, in addition to the \$57,145,000 previously sub-allocated to the Delaware State Housing Authority for 2003 under Executive Order Forty-One. Additionally, the \$41,745,000 of Volume Cap for 2003 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 \$173,180,000.

2. The \$116,895,000 allocation to the State of Delaware of the 2004 Volume Cap is hereby sub-allocated: \$58,447,500 to the Delaware State Housing Authority and \$58,447,500 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: February 6, 2004

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor
Secretary of State

DEPARTMENT OF INSURANCE**FORMS AND RATES BULLETIN NO. 28****LIMITATIONS ON NONRENEWALS OR
SURCHARGES ON
RESIDENTIAL HOMEOWNER POLICIES**

Issued: January 20, 2004

1.0 Purpose

On October 24, 1997, I had issued **Forms and Rates Bulletin 18** prohibiting premium surcharges based on the number of claims incurred during specified time periods. The bulletin prohibited rate increases without corresponding increases in loss experience.

During the first few months of 2003, the Delaware Insurance Department became concerned about an apparent increasing trend in many states by insurers issuing residential homeowners coverage to nonrenew coverage based on single claims or multiple minor claims filed by the insured. A number of states have instituted consumer protection measures to regulate an increasing practice by insurers to apply surcharges to insureds' premiums based on factors such as multiple minor claims being filed or multiple inquiries being made by insureds. A departmental committee was formed in mid-2003 to monitor the industry's activities in Delaware and to recommend appropriate measures to protect consumers.

Under 18 *Del. C.* § 4122, an insurer is required to provide written notice to insureds or applicants of the reasons for declining an application or for canceling or nonrenewing a policy of insurance on real or personal property. The permissible reasons for cancellation or nonrenewal are listed in 18 *Del. C.* § 4123. Under 18 *Del. C.* Chapter 25, surcharges would have to be approved under an appropriate rate filing by the insurer. The purpose of this bulletin is to supersede **Forms and Rates Bulletin 18** with respect to surcharges and to provide guidance with respect to the conditions under which insurers can issue notices of nonrenewal and/or impose surcharges upon renewal of residential homeowners insurance policies.

2.0 Definitions

2.1 "Inquiry" means any contact initiated by the insured that is not the filing or reporting of a claim to the insurer.

2.2 "Minor claim" means claims for medical payments, claims for workers compensation, claims for mine subsidence or any claim where the payment by the insurer does not exceed the applicable deductible for the particular claim upon which benefits are paid including any adjustment required by reason of a successful subrogation.

2.3 "Paid claim" means any actual payment by an

insurer as a result of a claim for benefits that exceeds the applicable deductible for the particular claim.

2.4 "Unpaid claim" means a claim upon which the insurer has not yet made a payment or has not yet provided a benefit or a closed no-pay claim. A claim is unpaid if an insurer obtains reimbursement by reason of subrogation.

2.5 "Natural phenomena related event" means damage caused by weather or natural phenomena, commonly referred to as "acts of God," whether or not classified as an emergency by any federal or state authority.

3.0 Limitations on Surcharges

3.1 No insurer authorized to do business in this State shall impose a surcharge at the inception of a homeowners insurance policy or upon renewal thereof solely because of claims or losses due to natural phenomena related damage or a third-party act committed by someone who is not a resident of the insured dwelling, unless the claim or loss identifies or confirms an increase in hazard, a material change in the risk assumed or a breach of contractual duties, conditions or warranties that materially affect the nature or the insurability of the risk. However, this limitation shall not be construed to prohibit an insurer from offering to continue coverage on different terms and conditions if the insured fails to reduce the risk of additional or future claims or losses, either by effecting necessary repairs or taking other remedial action.

3.2 No insurer authorized to do business in this State shall impose a surcharge on a premium of a homeowners insurance policy solely due to claim or loss frequency unless there have been two or more paid claims during the most recent three-year experience period. In counting the number of claims for the purpose of this bulletin, the insurer shall not consider or count inquiries, unpaid claims, minor claims or for a loss caused by a natural phenomena related event.

4.0 Limitations on Nonrenewals

4.1 No insurer authorized to do business in this State shall refuse to renew a homeowners insurance policy solely because of claims or losses due to natural phenomena related damage or a third-party act committed by someone who is not a resident of the insured dwelling, unless the claim or loss identifies or confirms an increase in hazard, a material change in the risk assumed or a breach of contractual duties, conditions or warranties that materially affect the nature or the insurability of the risk. However, this limitation shall not be construed to prohibit an insurer from offering to continue coverage on different terms and conditions if the insured fails to reduce the risk of additional or future claims or losses, either by effecting necessary repairs or taking other remedial action.

4.2 No insurer authorized to do business in this State shall refuse to renew a homeowners insurance policy solely due to claim or loss frequency unless there have been two or more paid claims during the most recent three-year

experience period. In counting the number of claims for the purpose of this bulletin, the insurer shall not consider or count inquiries, unpaid claims, minor claims or for a loss caused by a natural phenomena related event.

5.0 General Provisions

5.1 No insurer shall report any information related to claims not yet settled, inquiries or unpaid claims not countable for nonrenewal or surcharge purposes in Section 3 above to the Comprehensive Loss Underwriting Exchange ("CLUE") or other similar database.

5.2 Every insurer shall provide an advance annual notice to its insureds describing how the insurer considers claims history in determining whether to cancel, nonrenew or surcharge a policy as well as the maximum amount that the insurer could apply as a surcharge. Such notice may be on the declarations page or as a notice that is sent to the insured separately or with the policy.

5.3 No insurer shall consider any claims history or loss experience, including data from CLUE or any other database, for purposes of cancellation or non-renewal for inquiries, unpaid claims or minor claims that occurred prior to providing the notice referred to in paragraph 5.2. The insurer may use less than three years experience during the first three years after the first annual notice referred to in paragraph 5.2.

5.4 This bulletin shall take effect immediately. This bulletin supersedes **Forms and Rates Bulletin 18** which shall only be applicable to surcharges noticed between October 24, 1997 and the January 20, 2004.

Donna Lee H. Williams
Insurance Commissioner

SURPLUS LINES BULLETIN NO. 6

PREMIUM TAX ON SURPLUS LINES INSURANCE DEFINITION OF TAXABLE PREMIUM

Dated: February 11, 2004

There has been some question about the treatment of policy fees when reporting premium amounts used to calculate insurance premium tax due to the State of Delaware on surplus lines insurance written in this State. The purpose of this Bulletin is to clarify the definition of taxable premium according to Delaware law, and to instruct surplus lines brokers in the proper reporting and calculation of premium tax.

It is the Department's position that insurance premium tax should be calculated on premiums including any

associated fees in consideration for surplus line insurance policies. The Department bases its position on the following:

Chapter 19 of the Delaware Code, Title 18, deals exclusively with surplus line insurance. Section 1917 provides for a tax on surplus line insurance, which shall be computed on premiums received, exclusive of sums collected to cover federal and state taxes and examination fees, if any. This tax shall be at the same rate as applies to premiums for like kinds of insurance written by authorized insurers under Title 18.

Chapter 7 of Title 18, addresses the general premium tax provisions as they apply to authorized insurers. 18 Del. C., § 702(a) requires all insurers to report gross direct premium income, *including policy, membership and other fees, assessments and all other considerations for insurance (emphasis added)* on risks located in this State, after deducting amounts for returned premiums on cancelled policies and the unabsorbed portion of any deposit premium and the amount returned to policyholders as dividends and similar returns, whether paid in cash or used for reduction of premiums. 18 Del. C., § 702(c)(1) specifies a tax rate of 1.75% and § 707(a) specifies an additional .25%, for a total premium tax of 2%, upon this gross direct premium income as reported according to § 702(a).

In addition, 18 Del. C., § 2703 defines premium as "the consideration for insurance by whatever name called. Any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or other charge in consideration for an insurance contract is deemed part of the premium."

Therefore, it is determined that all surplus lines brokers must consistently include all associated policy fees in the calculation of taxable premium, and submit payment of insurance premium taxes based on policy premium including policy fees as required in Title 18. This ruling shall be effective immediately.

Donna Lee H. Williams
Insurance Commissioner

**DELAWARE STATE FIRE
PREVENTION COMMISSION**

Notice Of Public Hearing

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** 101 on Tuesday, April 20, 2004, at 1:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

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

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. The webpage address is www.delawarestatefiremarshal.com under the tabs "Technical Services" and "Proposed Changes".

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:a.m. on April 19, 2004, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

**DEPARTMENT OF AGRICULTURE
PESTICIDES SECTION
NOTICE**

The State of Delaware, Department of Agriculture, will hold a public hearing on April 28, 2004, 6 p.m., in the Conference Room, Delaware Department of Agriculture Building, 2320 S. Dupont Hwy., Dover, DE.

The hearing is being held for the purpose of receiving information, factual evidence, and public reaction as it

relates to proposed amendments to the Pesticide Regulations under **Title 3, Delaware Code**, Chapter 12, Pesticide Law. The hearing will be conducted in accordance with **Title 29**, Chapter 101, Administrative Procedures Act.

Beginning at 6 p.m., comments will be received relating to the numerous grammatical corrections proposed throughout the current regulations. The proposed amendments include a revised format of numerically coded paragraphs. Substantive changes under the proposed amendment include further restrictions on the distribution of restricted use pesticides (paragraph 14.2.1.2); and additional prohibitions on the open burning of any pesticides or pesticide containers (16.1.1.3).

Title 3, Delaware Code, Section 1237, provides the Department with the authority to issue regulations pursuant to this statute.

Interested parties may obtain a copy of the proposed amendments by calling the Department at 1-800-282-8685; by writing the Delaware Department of Agriculture, 2320 S. Dupont Hwy., Dover, DE 19901; or, by visiting the Register of Regulations site at: <http://www.delregs.state.de.us/index.html>.

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

Regulations For Training Of Paid Feeding Assistants

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has prepared four (4) revised proposed Regulations For Training of Paid Feeding Assistants pursuant to 16 **Del.C.** Section 1101(f). The remainder of the regulations addressing issues such as definitions, general requirements, training program requirements, curriculum and competencies appear as final regulations elsewhere in this edition of the Register of Regulations. The following four (4) proposed regulations, revised or extended after public hearings on February 3 and February 4, will be the subject of a further public hearing: Regulations 73.104, 73.201, 73.203A and the Introduction.

Invitation For Public Comment

A public hearing will be held as follows:

Monday, April 5, 2004, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway

New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

Robert Smith
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing.

DIVISION OF PUBLIC HEALTH
NOTICE

Nature of the Proceedings

Pursuant to 16 Delaware Code, Chapter 26A, Section 2631, these new regulations "Hearing Aid Loan Bank Program Regulations" establish requirements for a Hearing Aid Loan Program within the Division of Public for children under 3 years of age with a diagnosed hearing impairment.

Notice of Public Hearing

The Community Health Care Access Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Hearing Aid Loan Bank Program Regulations. The public hearing will be held on March 24, 2004 at 9:30 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Community Health Care Access Section
Jesse Cooper Building
Federal and Water Streets, Dover, Delaware
Telephone: (302) 744-4554

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by March 23, 2004. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by March 31, 2004 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 19903-0637

DIVISION OF SOCIAL SERVICES
NOTICE

Relative Caregivers' (Non-Parent) Transitional Resource Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the policy in the Division of Social Services Manual (DSSM) as it relates to time limitations for the Relative Caregivers' (Non-Parent) Transitional Resource Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2004.

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

DIVISION OF SOCIAL SERVICES
NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Food Stamp 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, 2004.

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

Summary Of Proposed Changes

- Excludes educational income (financial assistance) for food stamp purposes.
- Removes the reference to PAN (Program of Assistance Nutrition) income which is no longer counted for food stamp purposes per federal rules.

Citations

- Farm Bill Section 4102 (Simplified Definition of Income) allows a State the option to exclude certain types of income that are not counted under the State's Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs. Under this provision, States are allowed to exclude: educational assistance not counted under Medicaid; State complementary assistance not counted under section 1931 of Medicaid; and any type of income not counted under section 1931 of Medicaid or TANF.
- The Food and Nutrition Service (FNS) issued Administrative Notice 04-2003: Guidance on the Treatment of Nutritional Assistance Program (NAP) Benefit. Under the new guidance, States will no longer count NAP benefits from Puerto Rico when determining eligibility and benefits.

DIVISION OF SOCIAL SERVICES

NOTICE

Food Stamp Program Electronic Benefit Transfer

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM) as it relates to Electronic Benefit Transfer (EBT).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit,

Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2004.

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

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

NOTICE

Title Of The Regulations:

Regulations Governing Aboveground Storage Tanks

Brief Synopsis Of The Subject, Substance And Issues:

The Regulations Governing Aboveground Storage Tanks (ASTs) were created under the authority of the Jeffrey Davis Aboveground Storage Tank Act, Title 7, **Del.C.** Chapter 74A. The draft Regulations comprise five sections addressing AST installations, AST upgrades, AST inspections, and financial responsibility and remediation requirements for ASTs.

Other Regulations That May Be Affected By The Proposal:

None known

Notice Of Public Comment:

A Public Hearing will be held March 30, 2004 at 6:00pm at the DNREC, 391 Lukens Drive, New Castle, DE office.

Prepared By:

Jill Williams Hall , 302-395-2500 Date February 13, 2004

DIVISION OF FISH AND WILDLIFE

Title Of The Regulations:

Amendments To Shellfish Regulations

Brief Synopsis Of The Subject, Substance And Issues:

Oyster harvesting regulations need to be updated to cover the harvest season and the harvestable amount of oysters that can be taken annually in the direct market

natural oyster bed fishery.

Other Regulations That May Be Affected By The Proposal:

None

Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on March 29, 2004 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 12:00 PM, March 31, 2004.

Prepared By:

Richard Cole (302) 739-4782, January 10, 2003.

DIVISION OF FISH AND WILDLIFE

Title Of The Regulations:

Tidal Finfish Regulations

Brief Synopsis of the Subject, Substance and Issues:

The coast wide requirements for recreational black sea bass fishermen, as mandated by the Atlantic States Marine Fisheries Commission's Fishery Management Plan (FMP), in 2004 are a 12.0 inch minimum size length with a 25 fish creel limit and a closed season from September 8, 2004 through September 21, 2004 and December 1, 2004 through December 31, 2004. Delaware currently has an twelve (12) inch minimum size limit, a 25 fish creel limit and a closed season during September 2 through September 15 and December 1 through December 31. It is proposed to amend Tidal Finfish Regulation No. 3507 to establish adjusted dates for the closed season to September 8, 2004 through September 21, 2004 and December 1, 2004 through December 31, 2004 in order to be in compliance with the Atlantic States Marine Fisheries Commission's FMP.

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Management Council and the National Marine Fisheries Service are to use to establish conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2004. Delaware is obligated to cap the summer flounder recreational harvest at 139,000 fish for 2004. This is 35,000 more fish than were estimated to have been landed in 2003. Given that over one million marine recreational fishing trips occur annually in Delaware and that

the 2000 year class of summer flounder was reported to be above average thus suggesting that more fish may be available for harvest in 2004; it is unadvisable to significantly alter the management measures that were in place for 2003. However, landings information suggests that by increasing the bag limit by two additional fish only a minimal impact on total harvest will occur. As such, it is proposed that the seven management options that were presented for the 2003 fishing season, which included size ranges from 16 inches to 17.5 inches and creel limits ranging from 4 fish to 7 fish, and a variety of seasonal closures be presented again for public review and comment. The adopted management approach for 2003 included a 17.5 inch minimum size, and 4 fish creel limit. This particular option could be slightly adjusted by adding two additional fish to the creel limit for 2004. It is anticipated that the minimum size limit of 17.5 inches would be the major factor restraining the catch in 2004.

Possible Terms Of The Agency Action

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware

Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441. A public hearing on these proposed amendments will be held on March 25, 2004 at 7:00 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 30, 2004.

Prepared By:

Richard Cole, (302) 739-4782, January 13, 2004

DIVISION OF SOIL AND WATER CONSERVATION

REGISTER NOTICE

SAN # 2001-21

Title Of The Regulations:

Delaware Sediment and Stormwater Regulations.

Brief Synopsis Of The Subject, Substance And Issues:

Currently, the Regulations specify a hierarchy of preference when stormwater management practices are designed for new land development projects. The regulations would be amended to allow a greater degree of flexibility for the types of practices that could be considered for approval. This change will result in more low-impact

stormwater practices such as bio-retention, bio-swales and buffers being used to meet water quality requirements.

The existing design criterion for the water quality requirement is to provide extended detention for the first inch of runoff. This would be changed to a specific design storm for the corresponding land use. The proposed regulation changes provide more incentives for using "Conservation Design" resulting in site development with less paved surface and less runoff.

Possible Terms Of The Agency Action:

No sunset date is applicable.

Notice Of Public Comment:

Final hearing scheduled for April 20, 2004, 6:00 p.m. at the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Prepared By:

Frank M. Piorko 302-739-4411 2/10/04

**DEPARTMENT OF SAFETY AND
HOMELAND SECURITY**

BAIL ENFORCEMENT AGENTS

NOTICE

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 **Del.C.** §5404(a) proposes to amend several rules dealing with Bail Enforcement Agent.

Amend Rule 1.0 - Licensing. This amendment will further protect the public from a Bail Enforcement Agent that may endanger his or her safety while performing their duties.

Amend Rule 4.0 – Firearms Policy. This amendment will require Bail Enforcement Agents to provide proof of firearm training on a yearly basis.

Amend Rule 5.0 – Nightstick, PR24, Mace, Peppergas, Chemical Spray, and Handcuffs. This amendment requires Bail Enforcement Agents to have training by certified instructors to further protect the public from anyone that may endanger his or her safety while in the performance of a Bail Enforcement Agent.

Amend Rule 6.0 – Training. This amendment eliminates the waiver for initial licensing training to be done by January 19, 2003.

If you wish to view the complete Rules, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by March 31, 2004, to Delaware State Police, Detective Licensing, P.O. BOX 430, DOVER, DE, 19903.

**DELAWARE RIVER BASIN
COMMISSION**

P.O. Box 7360

25 State Police Drive

West Trenton, New Jersey 08628-0360

The Delaware River Basin Commission will meet Tuesday, March 2 and Wednesday, March 3, 2004 in Hawley, Pennsylvania at the PPL Wallenpaupack Environmental Learning Center. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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